

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

MANEY BROTHERS & CO., (a co-partnership consisting  
of J. W. Maney, John Maney, Herbert G. Wells and E.  
J. Wells), *Appellants,*

vs.

CRANE CREEK IRRIGATION LAND & POWER COM-  
PANY, CRANE CREEK IRRIGATION DISTRICT,  
SUNNYSIDE IRRIGATION DISTRICT, PORTLAND  
WOOD PIPE COMPANY, SLICK BROTHERS CON-  
STRUCTION COMPANY, LIMITED, a corporation, S.  
C. COMERFORD, E. D. FORD, A. G. BUTTERFIELD,  
and R. C. MCKINNEY, *Appellees.*

CRANE CREEK IRRIGATION DISTRICT, and SUNNY-  
SIDE IRRIGATION DISTRICT, *Cross-Appellants,*

vs.

MANEY BROTHERS & CO., (a co-partnership consisting  
of J. W. Maney, John Maney, Herbert G. Wells and E.  
J. Wells), *Cross-Appellees.*

Filed

Transcript of Record

SEP - 5 1925

F. D. Monckton,

Upon Appeal from the United States District Court for the  
District of Idaho, Southern Division.



United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

MANEY BROTHERS & CO., (a co-partnership consisting  
of J. W. Maney, John Maney, Herbert G. Wells and E.  
J. Wells), *Appellants,*

vs.

CRANE CREEK IRRIGATION LAND & POWER COM-  
PANY, CRANE CREEK IRRIGATION DISTRICT,  
SUNNYSIDE IRRIGATION DISTRICT, PORTLAND  
WOOD PIPE COMPANY, SLICK BROTHERS CON-  
STRUCTION COMPANY, LIMITED, a corporation, S.  
C. COMERFORD, E. D. FORD, A. G. BUTTERFIELD,  
and R. C. McKINNEY, *Appellees.*

CRANE CREEK IRRIGATION DISTRICT, and SUNNY-  
SIDE IRRIGATION DISTRICT,  
*Cross-Appellants,*

vs.

MANEY BROTHERS & CO., (a co-partnership consisting  
of J. W. Maney, John Maney, Herbert G. Wells and E.  
J. Wells), *Cross-Appellees.*

---

Transcript of Record

---

Upon Appeal from the United States District Court for the  
District of Idaho, Southern Division.



# INDEX

---

	Page
Answer of Crane Creek Irrigation Land & Power Company et al., to Cross-Bill of Maney Bros. & Co. ....	45
Answer of Sunnyside Irrigation District to Cross-Bill of Maney Brothers & Company .....	55
Answer of Crane Creek Irrigation District to Cross-Bill of Maney Brothers & Company .....	71
Assignment of Errors by Crane Creek Irrigation District.....	220
Assignment of Errors by Sunnyside Irrigation District .....	223
Assignment of Errors of Maney Brothers & Company.....	212
Bond of Appeal of Maney Brothers & Company .....	218
Cross Bill of Maney Brothers & Company.....	8
Citation .....	241
Clerk's Certificate .....	243
Decree .....	192
Journal Entry .....	240
Memorandum Decision on Claim of Plaintiff for Lien on Maney Brothers Mortgage .....	180
Notice of Appeal by Crane Creek Irrigation District.....	229
Notice of Appeal by Sunnyside Irrigation District .....	231
Order Settling Statement .....	180
Order Allowing Appeal .....	218
Order Allowing Appeal of Sunnyside Irrigation District Approv- ing Record and Bond for Costs .....	226
Order Allowing Appeal of Crane Creek Irrigation District Ap- proving Record and Bond for Costs .....	228
Petition for Appeal of Maney Brothers & Company.....	217
Return to Record .....	243
Statement of Evidence .....	87
Undertaking on Appeal of Crane Creek Irrigation District .....	233
Undertaking on Appeal of Sunnyside Irrigation District .....	237

## Names and Addresses of Attorneys of Record

---

J. H. RICHARDS,  
OLIVER O. HAGA,  
McKEEN F. MORROW,

Boise, Idaho,

*Attorneys for Appellants and Cross-Appellees, and  
for Portland Wood Pipe Company and Slick Brothers  
Construction Company, Limited, Appellees.*

C. S. VARIAN, Esq., Salt Lake City, Utah,

E. R. COULTER, Esq., Weiser, Idaho,

*Attorneys for Crane Creek Irrigation District and  
Sunnyside Irrigation District, Appellees and Cross-  
Appellants.*

B. S. VARIAN, Esq., Weiser, Idaho,

*Attorney for Crane Creek Irrigation Land & Power  
Company, E. D. Ford, A. G. Butterfield, and R. C.  
McKinney, Appellees.*

EDWIN SNOW, Esq., Boise, Idaho,

*Attorney for S. C. Comerford, Appellee.*

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

---

IN EQUITY. No. 511.

---

PORTLAND WOOD PIPE COMPANY, a Corpor-  
ation, Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COM-  
PANY, LIMITED, a corporation, et al.,  
Defendants,

AND

MANEY BROTHERS & CO. (a Co-partnership con-  
sisting of J. W. Maney, John Maney, Herbert G.  
Wells and E. J. Wells, Cross-complainant,

vs.

CRANE CREEK IRRIGATION LAND & POWER  
COMPANY, a Corporation, CRANE CREEK IR-  
RIGATION DISTRICT, a corporation, SUNNY-  
SIDE IRRIGATION DISTRICT, a Corporation,  
IDAHO NATIONAL BANK, a Corporation, C. R.  
SHAW WHOLESALE COMPANY, a Corpora-  
tion, UTAH FIRE CLAY COMPANY, a Corpora-  
tion, PORTLAND WOOD PIPE COMPANY, a  
Corporation, SLICK BROTHERS CONSTRUC-  
TION COMPANY, LIMITED, a Corporation,  
PETE MARCH, G. A. HEMAN, J. M. PINCK-  
ARD, F. A. SQUIER, S. C. COMERFORD, JIM  
MIREHOUSE, GUY COMERFORD, WM. R.  
COMERFORD, JAMES M. MAGEE, C. A.  
SMITH, J. L. SMITH, GEO. F. SMITH, CLAUD

F. SMITH, A. T. SCHWAB, L. F. EASTON,  
 A. L. CHENOWETH, GEO. C. CATER, E. D.  
 FORD, A. G. BUTTERFIELD, and R. C. Mc-  
 KINNEY, Cross-Defendants.

---

CROSS-BILL OF MANEY BROTHERS & CO.

*To the Honorable, the Judges of the District Court of  
 the United States for the District of  
 Idaho, Southern Division:*

And now comes Maney Brothers & Co., one of the defendants above named, and files this its cross-bill herein against Crane Creek Irrigation Land & Power Company, a corporation organized and existing under the laws of the State of Idaho and a citizen of said State, Crane Creek Irrigation District, a corporation organized and existing under the laws of the State of Idaho, and a citizen of said State, Sunnyside Irrigation District, a corporation organized and existing under the laws of the State of Idaho and a citizen of said State, Idaho National Bank, a corporation organized and existing under the laws of the United States and doing business in the State of Idaho, and a citizen of said State, C. R. Shaw Wholesale Company, a corporation organized and existing under the laws of the State of Nevada and doing business in the State of Idaho under and by virtue of a compliance with the laws of the State of Idaho, and a citizen of said State of Nevada, Utah Fire Clay Company, a corporation organized and existing under the laws of the State of Utah and a citizen of said State, Portland Wood Pipe Company,



a corporation organized and existing under the laws of the State of Oregon, and a citizen of the State of Oregon, Slick Brothers Construction Company, a corporation organized and existing under the laws of the State of Idaho and a citizen of the State of Idaho, Pete March, J. M. Pinckard, F. A. Squier, S. C. Comerford, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, H. H. Begley, James M. Magee, C. A. Smith, J. L. Smith, Geo. F. Smith, Claud F. Smith, Henry Whitmore, A. T. Schwab, L. F. Easton, A. L. Chenoweth, Geo. C. Cater, J. C. Toney, Thomas Sherry, E. H. Hasbrouch, E. D. Ford, A. G. Butterfield and R. C. McKinney, each residents and citizens of the State of Idaho, and G. A. Heman, a resident of St. Louis, Missouri, and a citizen of said State of Missouri. And thereupon this cross-complaint complains and alleges:

### I.

That at all the times hereinafter mentioned this cross-complainant, Maney Brothers & Co., was and still is a co-partnership consisting of J. W. Maney, a citizen and resident of the State of Oklahoma, residing in Oklahoma City, said State, and John Maney, a citizen and resident of the State of Oklahoma, residing in the city of El Reno, said State, and Herbert G. Wells and E. J. Wells, both citizens and residents of the State of Idaho, residing in the city of Boise, said State.

### II.

That the defendant, Crane Creek Irrigation Land & Power Company, is, and at all the times herein-

after mentioned was, a corporation organized and existing under the laws of the State of Idaho, with its principal place of business at Weiser, Washington County, Idaho, and is a citizen of the State of Idaho.

### III.

That the defendants Crane Creek Irrigation District and Sunnyside Irrigation District are, and at all the times hereinafter mentioned were, corporations, and each of them is a corporation organized and existing under the laws of the State of Idaho, and particularly under the provisions of Title 14, Political Code, Revised Codes of Idaho, and the laws supplemental to and amendatory thereof, with their principal place of business at Weiser, Washington County, Idaho, and each of them is a citizen of the State of Idaho.

### IV.

That the defendant, Idaho National Bank, is, and at all the times hereinafter mentioned was, a corporation organized under the laws of the United States, and engaged in general banking business as a national bank in the city of Boise, Ada County, Idaho, and is a citizen of the State of Idaho.

### V.

That the defendant, C. R. Shaw Wholesale Company, is, and at all the times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Nevada, and doing business in the State of Idaho under and by virtue of a compli-

ance with the laws of the State of Idaho, with its principal place of business at Boise, Ada County, Idaho, and is a citizen of the State of Nevada.

#### VI.

That the defendant, Utah Fire Clay Company, is, and at all the times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Utah, and is a citizen of the State of Utah.

#### VII.

That the defendant herein, Portland Wood Pipe Company, is a corporation organized and existing under the laws of the State of Oregon, and is a citizen of the State of Oregon.

#### VIII.

That the defendant, Slick Brothers Construction Company, Limited, is, and at all the times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Idaho, with its principal place of business at Boise, Ada County, Idaho, and is a citizen of the State of Idaho.

#### IX.

That each of the following named defendants, to-wit: Pete March, J. M. Pinckard, F. A. Squier, S. C. Comerford, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, H. H. Begley, James M. Magee, C. A. Smith, J. L. Smith, Geo. F. Smith, Claud F. Smith, Henry Whitmore, A. T. Schwab, L. F. Easton, A. L. Chenoweth, Geo. C. Cater, J. C. Toney, Thomas Sherry, E. H. Hasbrouch, E. D. Ford, A. G.

Butterfield and R. C. McKinney, is, and at all the times hereinafter mentioned was, a resident of the State of Idaho.

X.

That the defendant, G. A. Heman, is, and at all the times hereinafter mentioned was, a resident of St. Louis, Missouri, and is a citizen of the State of Missouri.

XI.

That the matter in controversy in this suit, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars (\$3,000.00).

XII.

That on the 7th day of November, 1914, the said Portland Wood Pipe Company, plaintiff in the above named suit and one of the defendants to this cross-complainant's cross-bill herein, filed its bill of complaint in this court against this cross-complainant and the other parties to this suit for the foreclosure of a mechanic's lien alleged to cover a certain irrigation system, reservoir, water rights and water appropriations and the rights of way therefor, constructed by or at the instance and request of the said Crane Creek Irrigation Land & Power Company, which system is hereinafter more particularly described, being the identical irrigation system described in this cross-complainant's mortgage herein sought to be foreclosed; that said suit is still pending in this court, and for a more particular statement of the relief therein sought by said Portland

Wood Pipe Company and the proceedings therein had reference is hereby made to the records and files in said cause.

XIII.

That on or about the 29th day of September, 1911, the defendant, Crane Creek Irrigation Land & Power Company, for a valuable consideration, made, executed and delivered to this cross-complainant its certain promissory note, in words and figures following, to-wit:

\$87,000.00 Weiser, Idaho, September 29, 1911.

FOR VALUE RECEIVED, The Crane Creek Irrigation Land & Power Company, a corporation, promises to pay to the order of Maney Bros. & Co., at the Boise City National Bank at Boise, Idaho, on the 15th day of November, 1912, the sum of Eighty-seven Thousand Dollars (\$87,000.00), in lawful money of the United States, with interest thereon at the rate of six per cent. (6%) per annum from November 15th, 1911.

In case suit or action be instituted for the collection of this note, or any portion thereof, the undersigned agrees to pay, in addition to costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorneys' fees in said suit or action.

CRANE CREEK IRRIGATION LAND &  
POWER COMPANY,

(Corporate Seal) By E. D. Ford, President.

Attest: E. P. Hall, Secretary.

## XIV.

That, for the purpose of securing the payment of said note, principal and interest, together with any and all other indebtedness of said defendant to this cross-complainant, whether evidenced by note or notes or otherwise, and together with any sum or sums which this cross-complainant might pay or deem it necessary to pay in order to protect the property hereinafter described, or any part thereof, or any rights of this cross-complainant or of said Crane Creek Irrigation Land & Power Company therein, because of any prior lien or claim or other charge against the same, whether created before or after the execution of said note, the said Crane Creek Irrigation Land & Power Company, on or about the said 29th day of September, 1911, made, executed, acknowledged and delivered to this cross-complainant its certain mortgage, bearing date of September 29th, 1911, wherein and whereby the said defendant Crane Creek Irrigation Land & Power Company mortgaged, as aforesaid, to this cross-complainant the following described property in Washington County, Idaho, to-wit:

(a) That certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West, B. M., Washington County, Idaho, application for right of way for which was filed in the United States Land Office, Boise, Idaho, by one E. D. Ford, on the 3rd day of September, 1907, which said application was approved by Thos. Ryan, Acting Secretary of the Interior, on the 26th day of

October, 1907; which said reservoir, as shown by said map (a duplicate of which is on file in the said United States Land Office at Boise, Idaho), will have a storage capacity of approximately seventy thousand six hundred and seventeen (70,617) acre feet, with a dam fifty-nine (59) feet high; and the dam for which said reservoir is situated in the Southeast Quarter (SE $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ) of Section Nineteen (19) of said township and range; and all lands situated within said reservoir site, including the right of way secured, as aforesaid, from the Government of the United States.

(b) All canals, ditches, headgates, flumes, pipe lines, laterals and other structures, dams and works used or intended to be used, or required in connection with the distribution of the water from said reservoir, and for carrying and distributing said water to the place or places of intended use, now owned or constructed, or which may hereafter be acquired or constructed by the said Crane Creek Irrigation Land & Power Company, with the rights of way therefor.

(c) All water rights and rights to the use of water in connection with the reservoir and irrigation works hereinbefore described, now owned, or that may hereafter be acquired, by said Crane Creek Irrigation Land & Power Company, and particularly including the following permits issued by the State Engineer of the State of Idaho, all of which said permits are now owned and held by the Crane Creek Irrigation Land & Power Company, said permits being issued on the dates and numbered and recorded

in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.

Permit No. 6832, recorded Book 20, page 6832, issued Sept. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sept. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

(d) The lands, described as follows:

The SE $\frac{1}{4}$  of Sec. 5.

E $\frac{1}{2}$  of the SE $\frac{1}{4}$ , and the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

E $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Sec. 10

N $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 17

E $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Sec. 17

SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 8

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , and the E $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Sec. 11

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 14

NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 8

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ , and the N $\frac{1}{2}$  of the NW $\frac{1}{4}$ , and the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 12

Lot No. 4, and the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 7, All in Township Ten (10) North, Range Four (4) West, B. M.

The SW $\frac{1}{4}$  of Sec. 27



N $\frac{1}{2}$  of the NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ ,  
and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 13

All in Township Eleven (11) North, Range  
Four (4) West, B. M.

And the E $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 12, Township Ten  
(10) North, Range Five (5) West, B. M., con-  
taining 1440 acres, more or less.

Also the following described lands, the legal title  
to which now stands in the State of Idaho, but certifi-  
cates for the purchase of which are held by the said  
Crane Creek Irrigation Land & Power Company,  
to-wit:

The NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 9

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 9

NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 4

SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 4

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 4

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 7

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 8

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 8

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 9

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 9

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 9

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 10

All in Township Ten (10) North, Range Four  
(4) West, B. M.

The NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 33

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 33

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 33

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 33

All in Township Eleven (11) North, Range  
Four (4) West, B. M.

The SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 2, Township Ten  
(10) North, Range Five (5) West, B. M.

The NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 11

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 13

NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 13

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 14

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

All in Township Eleven (11) North, Range Six  
(6) West, B. M.

The SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 36

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

All in Township Eleven (11) North, Range Five (5) West, B. M., containing 1760 acres, more or less.

Together with all rights of way, reservoirs, dams, canals, flumes, pipe lines, ditches and other structures forming a part of said irrigation system, whether then owned by the said Crane Creek Irrigation Land & Power Company, or thereafter constructed or acquired by said Company, with all the easements, rights of way, privileges, and appurtenances thereunto belonging or in anywise appertaining, a copy of which said mortgage is hereto attached, marked Exhibit "A" and made a part hereof; and this cross-complainant prays leave to refer to said exhibit for a full and particular statement of the terms and provisions thereof and the property included therein.

XV.

That said mortgage was duly acknowledged and certified so as to entitle it to be recorded, and the same was on the 6th day of October, 1911, filed for record in the office of the County Recorder of Washington County, Idaho, and recorded in Book 15 of Mortgages, page 403, et seq.

XVI.

That the total indebtedness of said Crane Creek Irrigation Land & Power Company to this cross-complainant, exclusive of interest, secured by said mortgage, was the sum of \$90,992.38; that on the 24th day of June, 1913, the said Crane Creek Irrigation Land & Power Company paid to this cross-com-

plainant on account of such indebtedness and accumulated interest thereon at the rate of six per cent. per annum from November 15, 1911, the sum of \$60,000.00, and on the 27th day of December, 1913, the said defendant paid to this cross-complainant the sum of \$5,000.00, leaving a balance due this cross-complainant of \$35,986.10, with interest thereon from the 27th day of December, 1913, at the rate of six per cent. (6%) per annum; that no other payments on account of said indebtedness have been made to this cross-complainant by said defendant or any one for it.

#### XVII.

That the said defendant Crane Creek Irrigation Land & Power Company has defaulted in the payment of taxes and other sums and payments required to be paid in order to protect the interest of this cross-complainant in said property, as well as the interest of said defendant Crane Creek Irrigation Land & Power Company, and this cross-complainant may at any time be required to make large payments for taxes and other purposes in order to protect its interest therein, and it therefore prays that it may be permitted on final hearing to make proof of such payments and to be reimbursed therefor, as fully as if such payments had been made prior to the filing of this cross-bill and were herein specifically set forth.

#### XVIII.

That since the execution and delivery of said mortgage this cross-complainant released from the lien

thereof the following lands and premises, and no other, to-wit:

The SW $\frac{1}{4}$  of the SW $\frac{1}{4}$ , the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$ ,  
and the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 4,

The NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 8; and

The SW $\frac{1}{4}$  of the NE $\frac{1}{4}$ , the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ ,  
the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , and the NE $\frac{1}{4}$  of the  
NW $\frac{1}{4}$  of Section 9, all in Township Ten (10)  
North, Range Four (4) West, B. M.;

and the said mortgage and the lien created thereby is in full force and effect as against all property, rights and franchises described in said mortgage, excepting the lands released as aforesaid, and against the said irrigation system therein referred to and more particularly described as follows, to-wit:

That certain canal on the southerly side of Crane Creek and crossing the west boundary line of the Crane Creek Irrigation District near the center of Section Seven (7), Township Eleven (11) North, Range Three (3) West, Washington County, Idaho, and extending thence in a southerly direction through Sections 7, 18, 19 and 30 and into Section 31 of said township and range; thence in a northerly and easterly direction through said Sections 31 and 30 and into and through Sections 25 and 36 in Township 11 North, Range 4 West; thence in a southerly and westerly direction through Sections 1, 2, 11, 10, 15, 16, 21, 28, 20, 29, 17, 19 and 18 in Township 10 North, Range 4 West, B. M., and thence in a southerly and westerly direction through Sections 13 and 24 to a point near what is known as Buttermilk Slough in

the Northeast Quarter (NE $\frac{1}{4}$ ) of Section 23, Township 10 North, Range 5 West, B. M. Also that certain siphon and branch canal, branching off or extending from the main canal, hereinbefore described, in the Northwest Quarter (NW $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 36, Township 10 North, Range 4 West, B. M., and extending across Weiser River in a northwesterly direction through Sections 35, 26, 23 and 22, and in a southerly and westerly direction through Sections 27, 28 and 32, Township 11 North, Range 4 West, B. M. And all branch canals, main and subordinate laterals, service ditches, pipe lines, headgates and other structures of every kind and nature, used or intended to be used in connection with said irrigation system, or any part thereof; and all water rights and water appropriations made for use in connection therewith, including the water permits hereinbefore described and Permit No. 8507, recorded in Book 27 of the records in the office of the State Engineer of the State of Idaho, at page 8507, and issued by the State Engineer of the State of Idaho, on August 10, 1912; being the identical irrigation system, water rights and water appropriations described in the lien of the said Portland Wood Pipe Company and the bill herein foreclosing such lien.

### XIX.

That no bonds, notes, mortgages, contracts or securities of any kind whatsoever were deposited by the said Crane Creek Irrigation Land & Power Company with the Trustee named in said mortgage for

such purpose, as additional security for the payment of the said indebtedness to this cross-complainant, as contemplated and permitted by sub-paragraphs numbered 1, 2, 3, 4, 5, 7, 8, 9 and 10 of said mortgage (Exhibit "A"); and the said defendant Crane Creek Irrigation Land & Power Company, has not exercised or availed itself of any of the provisions contained in said sub-paragraphs.

### XX.

That the said note and the mortgage securing the same provide that the said defendant Crane Creek Irrigation Land & Power Company shall pay a reasonable attorney's fee for foreclosing said mortgage or the bringing of suit thereon, and this cross-complainant alleges and shows that the sum of Four Thousand Dollars (\$4,000.00) is a reasonable attorney's fee for conducting said foreclosure and should be allowed this cross-complainant herein.

### XXI.

That the said defendants Crane Creek Irrigation District, Sunnyside Irrigation District, Idaho National Bank, C. R. Shaw Wholesale Company, Utah Fire Clay Company, Portland Wood Pipe Company, Shick Brothers Construction Company, Limited, Pete March, G. A. Heman, J. M. Pinckard, F. A. Squier, S. C. Comerford, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, H. H. Begley, James M. Magee, C. A. Smith, J. L. Smith, Geo. F. Smith, Claud F. Smith, Henry Whitmore, A. T. Schwab, L. F. Easton, A. L. Chenoweth, Geo. C. Cater, J. C. Toney,

Thomas Sherry and E. H. Hasbrouch have, or claim to have, some interest, lien or claim in, to, or upon the said premises, canals, reservoir, irrigation works, water rights and structures, or some part thereof; but the interests, claims or liens of said defendants are, and each of them is, subject, subsequent and subordinate to the said mortgage lien of this cross-complainant.

## XXII.

That numerous liens have been filed against the said irrigation system, lands, rights of way and water rights hereinbefore described, arising out of the construction of said irrigation system; that the amount of such liens and existing mortgages against the same aggregate, as this cross-complainant is informed and believes, upwards of \$150,000.00, and the said Crane Creek Irrigation Land & Power Company is unable to pay or discharge the same; that in order to properly preserve, protect and maintain said lands, irrigation system, water rights, easements, rights and franchises appurtenant thereto and necessary for the use and operation thereof, and in order to protect this cross-complainant and other lien claimants having liens or mortgages on or against said property, rights and franchises, a Receiver should be appointed for all of said property, irrigation works, rights and franchises, with power to preserve, maintain and operate the same pending the foreclosure of this cross-complainant's mortgage and the liens that have been filed against said property, rights and franchises, as aforesaid, and with power



to pay the taxes levied and assessed against the same and other necessary outlays and disbursements.

XXIII.

That after the the execution of said note by the defendant Crane Creek Irrigation Land & Power Company, but before delivery thereof to this cross-complainant, the defendants E. D. Ford, A. G. Butterfield and R. C. McKinney, for value received, endorsed the same by writing their names across the back thereof, and waived in writing presentation, demand, protest and notice of non-payment; that by virtue of such endorsement the said E. D. Ford, A. G. Butterfield and R. C. McKinney each became and is liable for the payment of the full amount due this cross-complainant, as aforesaid.

XXIV.

This cross-complainant further shows that no proceedings at law have been had or instituted or any other suit or action commenced for or on behalf of this cross-complainant for the foreclosure of said mortgage or the collection of the amount due this cross-complainant, as aforesaid.

*In Consideration Whereof*, and forasmuch as this cross-complainant is remediless in the premises according to the strict course of the common law, and can only have relief in a court of equity, it prays the aid of this Honorable Court as follows:

(a) That this cross-complainant's said mortgage may be decreed a first and prior lien upon the lands and premises therein described, excepting the lands

released therefrom as hereinbefore stated, and upon the irrigation system, property, rights and franchises hereinbefore described, and the whole thereof; and that this cross-complainant may have a decree foreclosing its said mortgage, and judgment against the said defendant Crane Creek Irrigation Land & Power Company and the defendants E. D. Ford, A. G. Butterfield and R. C. McKinney, endorsers of said note, for the sum of \$35,986.10, together with interest thereon at the rate of six per cent. (6%) per annum from the 27th day of December, 1913, and for the sum of \$4,000.00 attorney's fee, and costs and disbursements herein.

(b) That the usual decree may be made for the sale of said premises hereinbefore described and embraced in said mortgage, according to law and the practice of this Honorable Court, and that the said irrigation system and the water rights appurtenant thereto may be sold as an entirety or whole and without redemption, to satisfy the amount due this cross-complainant, as aforesaid; and that in case of such sale the said defendants, and each and all of them, and all persons claiming by, through, or under them, or either of them, may be forever barred and foreclosed of and from all equity of redemption, and all claim of, in and to the said irrigation system, lands, rights of way, water rights, rights and franchises, and every part thereof, and that the purchaser thereof be let into the immediate possession of said premises, irrigation works, rights and franchises so sold; and that in the event the proceeds of

such sale be insufficient to satisfy and discharge the amount due this cross-complainant, as aforesaid, together with interest, costs of suit, and attorney's fees herein, this cross-complainant may have judgment for such deficiency against the defendant Crane Creek Irrigation Land & Power Company and the defendants E. D. Ford, A. G. Butterfield and R. C. McKinney, and execution therefor.

(c) That a Receiver be appointed for the lands, irrigation works, water rights and property embraced in this cross-complainant's said mortgage and hereinbefore described, with full power and authority in said Receiver to take immediate possession and control thereof and to preserve, protect, maintain and operate the same under the direction of this Honorable Court, and in such manner as may be deemed necessary from time to time under the circumstances of the case.

(d) That this cross-complainant may have such other and further relief in the premises as the nature of the case may require, and as shall be proper and agreeable to the principles of equity and to this Court.

And it may please your Honors to grant unto this cross-complainant a writ or writs of subpoena and other process, directed to the Marshal of said district, commanding him to summon the defendants hereinbefore named, and each and every of them, to be and appear in this Court on a certain day therein named, and under a certain penalty, therein to be limited and stated, and then and there, singly and severally, to make true and direct answer to this

cross-bill (but not under oath, such answer under oath being expressly waived as to each of said defendants), and to show cause, if any they have, why the prayer of this cross-bill should not be granted according to the rules and practices of this Honorable Court, and to stand ready to perform and abide by such order, direction or decree as may be made against them in the premises, and as to your Honorable Court shall seem meet.

And this your cross-complainant will ever pray, etc.

MANEY BROTHERS & CO.,  
By RICHARDS & HAGA,  
Its Solicitors.

J. H. RICHARDS,

O. O. HAGA,

McKEEN F. MORROW,

Counsel for Cross-Complainant, Maney Brothers  
& Co.,

Residence: Boise, Idaho.

United States of America,

District of Idaho,

County of Ada,—ss.

E. J. Wells, being first duly sworn, upon his oath deposes and says: That he is a member of the firm of Maney Brothers & Co., the cross-complainant in the foregoing cross-bill, and that he makes this affidavit and verification for and on behalf of the said cross-complainant; that he has read the foregoing cross-bill and knows the contents thereof, and that he believes the facts therein stated to be true.

E. J. WELLS.

Subscribed and sworn to before me this 29th day of December, 1914.

(Seal)

EDNA L. HICE,

Notary Public in and for Ada County, Idaho.

---

EXHIBIT "A."  
MORTGAGE.

*This Indenture*, made and entered into this 29th day of September, 1911, between the Crane Creek Irrigation Land & Power Company, a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal place of business at Weiser, Idaho, (hereinafter sometimes called the mortgagor), the party of the first part, and Maney Bros. & Co., (a co-partnership consisting of J. W. Maney, residing at Oklahoma City, Okla., John Maney, residing at El Reno, Okla., and Herbert G. Wells and E. J. Wells, both residing at Boise, Idaho,) the parties of the second part, (hereinafter sometimes called the mortgagees).

*Witnesseth*: That the mortgagor for and in consideration of the sum of Eighty-seven Thousand Dollars, (\$87,000.00), lawful money of the United States, to it in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, sell, convey, assign, transfer and set over unto the said parties of the second part, and to their heirs, executors, administrators and assigns

forever, all property (whether real, personal or mixed) which the said mortgagor now has or may hereafter acquire, and particularly the following described property, to-wit:

(a) That certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West, B. M., Washington County, Idaho, application for right of way for which was filed in the United States Land Office, Boise, Idaho, by one E. D. Ford, on the 3rd day of September, 1907, which said application was approved by Thos. Ryan, Acting Secretary of the Interior, on the 26th day of October, 1907; which said reservoir, as shown by said map (a duplicate of which is on file in the said United States Land Office at Boise, Idaho), will have a storage capacity of approximately seventy thousand six hundred and seventeen (70,617) acre feet, with a dam fifty-nine (59) feet high; and the dam for which said reservoir is situated in the Southeast Quarter (SE $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ) of Section Nineteen (19) of said township and range; and all lands situated within said reservoir site, including the right of way secured, as aforesaid, from the Government of the United States.

(b) All canals, ditches, head-gates, flumes, pipe lines, laterals and other structures, dams and works used or intended to be used, or required in connection with the distribution of the water from said reservoir, and for carrying and distributing said water to the place or places of intended use, now owned or constructed, or which may hereafter be acquired or con-

structed by the mortgagor, with the rights of way therefor.

(c) All water rights and rights to the use of water in connection with the reservoir and irrigation works hereinbefore described, now owned, or that may hereafter be acquired, by the mortgagor, and particularly including the following permits issued by the State Engineer of the State of Idaho, all of which said permits are now owned and held by the mortgagor, said permits being issued on the dates and numbered and recorded in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.

Permit No. 6832, recorded Book 20, page 6832, issued Sept. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sept. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

(d) The lands, described as follows:

The SE $\frac{1}{4}$  of Sec. 5.

E $\frac{1}{2}$  of the SE $\frac{1}{4}$ , and the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

E $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Sec. 10

N $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 17

E $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Sec. 17

SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 8

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , and the E $\frac{1}{2}$  of the SW $\frac{1}{4}$  of  
Sec. 11

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 14

NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 8

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ , and the N $\frac{1}{2}$  of the NW $\frac{1}{4}$ ,  
and the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 12

Lot No. 4, and the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 7,  
All in Township Ten (10) North, Range Four  
(4) West, B. M.

The SW $\frac{1}{4}$  of Sec. 27

N $\frac{1}{2}$  of the NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ ,  
and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 13

All in Township Eleven (11) North, Range  
Four (4) West, B. M.

And the E $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 12, Township Ten  
(10) North, Range Five (5) West, B. M., con-  
taining 1440 acres, more or less.

Also the following described lands, the legal title  
to which now stands in the State of Idaho, but certifi-  
cates for the purchase of which are held by the said  
mortgagor, to-wit:

The NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 9

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 9

NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 4

SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 4

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 4

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 7

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 8



NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 8

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 9

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 9

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 9

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 10

All in Township Ten (10) North, Range Four

(4) West, B. M.

The NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 33

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 33

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 33

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 33

All in Township Eleven (11) North, Range

Four (4) West, B. M.

The SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 2, Township Ten

(10) North, Range Five (5) West, B. M.

The NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 11

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 13

NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 13

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 14

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

All in Township Eleven (11) North, Range Six  
(6) West, B. M.

The SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 36

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

All in Township Eleven (11) North, Range Five  
(5) West, B. M., containing 1760 acres, more  
or less.

*To Have and to Hold* all and singular the above described real, personal and mixed property, and the rights, franchises, contracts, mortgages, notes, bonds, water rights and permits, rights of way, reservoirs, dams, canals, flumes, pipe lines, ditches and other structures forming a part of said irrigation system now owned by the mortgagor, or hereafter constructed or acquired by the mortgagor, with all the easements, rights of way, privileges, and appurtenances thereunto belonging, or in anywise appertaining.

This grant is intended as a mortgage to secure the payment of a certain promissory note of even date herewith executed and delivered by the said mortgagor unto the said mortgagees, a copy of which said note is in words and figures following, to-wit:

\$87,000.00

Weiser, Idaho, September 29, 1911.

*For Value Received*, The Crane Creek Irrigation Land & Power Company, a corporation, promises to pay to the order of Maney Bros. & Co., at the Boise City National Bank at Boise, Idaho, on the 15th day of November, 1912, the sum of Eighty-seven Thousand Dollars (\$87,000.00), in lawful money of the United States, with interest thereon at the rate of six per cent. (6%) per annum from November 15th, 1911.

In case suit or action be instituted for the collection of this note, or any portion thereof, the undersigned agrees to pay in addition to costs and disbursements allowed by statute, such sum as the Court may adjudge reasonable as attorneys' fees in said suit or action.

CRANE CREEK IRRIGATION LAND  
& POWER COMPANY,

(Corporate Seal) By E. D. Ford, President.

Attest: E. P. Hall, Secretary.

Together with any and all other indebtedness to the mortgagees, whether evidenced by note or notes, or otherwise, of the mortgagor, and together with any sum or sums, which the mortgagees, or either of them, may pay or deem it necessary to pay in order to protect the said property, or any part thereof, or any rights of the mortgagor or of the mortgagees therein because of any prior lien or claim, or other charge against the same, whether heretofore or hereafter created.

And these presents shall be void if payment be made by the said mortgagor, its successors or as-

signs, of the said note when due, and of all other sums due or to become due, the mortgagees from the mortgagor, or which the mortgagees, or either of them, may have advanced or paid, with interest thereon as herein provided. But in case default shall be made in the payment of said sums of money, or any part thereof, when the same become due and should or ought to be paid, then and from thenceforth it shall be optional with the said mortgagees, their or either of their executors, administrators or assigns, to enter into and upon all and singular the above described premises and to sell and dispose of the same and of all benefit and equity of redemption of the mortgagor, its successors or assigns, according to law. And, out of the money arising from such sale, to retain the amount due the mortgagees, together with the costs and charges of foreclosure suit, including reasonable counsel fees, and also the amounts of all such payments for taxes, assessments, or encumbrances which the mortgagees, or either of them, may have paid in order to protect said property against other liens, charges and encumbrances, with the interest thereon at the rate of eight per cent. (8%) per annum, rendering the over-plus, if any there should be, unto the said mortgagor, its successors or assigns.

And the said mortgagor hereby further covenants, promises and agrees to and with the mortgagees, to pay and discharge at maturity all taxes, assessments, liens, or other encumbrances now subsisting, or hereafter to be laid or imposed upon said premises, or which may be in effect a prior charge thereupon to

these presents, during the continuance hereof, and in default thereof, the mortgagees may, at their option, pay and discharge the same; but all sums so paid by the mortgagees shall bear interest as aforesaid at the rate of eight per cent. (8%) per annum until paid, and shall, as aforesaid, be considered as secured by these presents and be a lien upon said property, premises, rights and franchises, and shall be deducted from the proceeds of the sale thereof, as above stated, with interest as aforesaid.

And the parties hereto expressly agree as follows:

1. The mortgagor shall have the right to carry out its contract with what is known as the Sunnyside Irrigation District, which contract bears date of August 22nd, 1910. But the mortgagees shall not be required to release the lien of this indenture on any of the property herein described, or upon the property to be conveyed under said contract by the mortgagor to said Sunnyside Irrigation District, until there has been deposited, as additional security for the indebtedness secured hereby, with F. F. Johnson, Cashier of the Boise City National Bank, of Boise, Idaho, as Trustee, Seventy-five Thousand Dollars (\$75,000.00) par value of the legally issued bonds of said irrigation district, the legality of which said bonds shall first have been approved by the Supreme Court of the State of Idaho. But upon such bonds being delivered the mortgagees agree to fully release from the lien of this indenture the interest to be conveyed by the mortgagor under its said contract to said Sunnyside Irrigation District.

2. The mortgagor shall likewise have the right to carry out its contract with what is known as the Crane Creek Irrigation District, which contract bears date of August 22nd, 1910. But the mortgagees shall not be required to release the lien of this indenture on any of the property herein described, or upon the property to be conveyed under said contract by the mortgagor to said Crane Creek Irrigation District, until there has been deposited, as additional security for the indebtedness secured hereby, with F. F. Johnson, Cashier of the Boise City National Bank of Boise, Idaho, as Trustee, Fifty Thousand Dollars (\$50,000.00) par value, of the legally issued bonds of said irrigation district, the legality of which said bonds shall have first been approved by the Supreme Court of the State of Idaho. But upon such bonds being delivered the mortgagees agree to fully release from the lien of this indenture the interest to be conveyed by the mortgagor under its said contract to said Crane Creek Irrigation District.

3. The mortgagor having heretofore contracted to sell to the Weiser Irrigation District fifteen thousand (15,000) acre feet of water in its said reservoir, it is hereby mutually agreed that this indenture shall not be a lien or encumbrance on the interest to be conveyed by the mortgagor to said Weiser Irrigation District, but such interest, to-wit: an interest in said reservoir and irrigation system and the water rights appurtenant thereto sufficient to give said Weiser Irrigation District fifteen thousand (15,000) acre feet of water in said reservoir, shall be unaffected by

the lien hereof, in the event such interest be accepted or taken over by said Weiser Irrigation District; and in lieu thereof the mortgagor hereby expressly agrees to deposit with said trustee, as additional security for the indebtedness secured hereby, as soon as the same can be delivered or so turned over under the terms of the contract between the mortgagor and said Weiser Irrigation District, the entire consideration to be received by the mortgagor from said Weiser Irrigation District for said interest in said reservoir and irrigation system, which consideration it is agreed shall be Seventy-five Thousand Dollars, (\$75,000.00) par value, of the legally issued bonds of said District. And it is further stipulated and agreed that in the event said Weiser Irrigation District should fail to authorize the issuance of said bonds for said purpose, or should fail to carry out its said contract with the mortgagor for the purchase of said water and interest, then and in that event, the lien of this indenture shall attach to the interest and water so intended to be conveyed to said Weiser Irrigation District.

4. The mortgagees agree that the mortgagor may sell water rights and interest in its said irrigation system for the irrigation of lands situated thereunder in addition to the rights which it is hereby authorized to contract or sell to the irrigation districts above mentioned. But in the case of each and every such sale it shall pay to the mortgagees Five Dollars (\$5.00) for each acre foot of water sold in said system; such payment shall be immediately credited upon the indebtedness due the mortgagees hereunder.

But in the event such water rights or interest be sold on time and security be taken therefore, (and security shall be taken in every case where the same are sold on time), then such security to the amount of Five Dollars (\$5.00) per acre foot shall be deposited with the said trustee, and held as hereinafter provided. But the mortgagor may, at its option, in lieu of depositing the consideration received for the sale of said water rights or interest, pay to the mortgagees Five Dollars (\$5.00) per acre foot, as aforesaid, for such water rights or interest, and upon such payment being made, or security deposited, as aforesaid, the mortgagees will execute a release of this indenture in so far as it affects the interest or water rights sold.

5. The mortgagor may in the usual course of business and at the reasonable market value, sell any of the lands above described, excepting what may be required for rights of way for the reservoir, canals, or other parts of the irrigation system, and may pay the usual commissions for effecting such sales, taxes and liens prior to this indenture; but the balance of the proceeds from said sales and the whole thereof, if paid in cash, shall immediately be turned over to the mortgagees and applied on the indebtedness secured hereby; and if such balance be not paid in cash it shall be properly secured and the note, mortgage or contract deposited with the trustee, to be by the trustee held and sold as herein provided. Upon such sales being made the mortgagees will as and when requested execute necessary releases releasing the property sold from the lien of this indenture.



6. The mortgagor shall have the right to extend until January 1st, 1913, present or existing mortgages or liens without waiver of priority of the lien of such mortgage over this indenture.

7. The mortgagor shall have the right to sell the bonds deposited with the trustee of the Crane Creek Irrigation District and of the Sunnyside Irrigation District, or any part thereof, at not less than seventy-five per cent. (75%) of their par value, and the trustee is hereby authorized to deliver to the mortgagor, or any of its officers, any of said District bonds upon receipt of seventy-five per cent. (75%) of the par value thereof; and the money so received shall be turned over to the mortgagees and applied upon the indebtedness secured hereby. But none of the bonds of the Weiser Irrigation District shall be sold at less than ninety per cent. (90%) of their par value.

8. In the event the said F. F. Johnson, the Trustee herein named, should for any reason cease to be an officer of the Boise City National Bank, then the trusts, powers and authority by this indenture conferred upon said F. F. Johnson shall vest in and be exercised by the cashier of said Boise City National Bank; and no assignment or other instrument shall be required to transfer from said F. F. Johnson, in the event he ceases to be an officer of said bank, to the cashier of said bank the trusts, powers and authority hereby conferred upon said trustee.

9. Upon default in the payment of the indebtedness secured hereby, and upon the failure of the mortgagor to pay the same according to the terms hereof,

the trustee above named shall upon the request of the mortgagees, or either of them, sell all security, including the bonds aforesaid, which may have been deposited with him, according to the laws of the State of Idaho for the sale of pledged property. And the proceeds of such sale, less the expenses of sale and the charges of the trustees, including reasonable attorneys' fees to be determined by the trustee, shall be paid to the mortgagees and credited upon the indebtedness secured hereby; and thereupon this indenture may be foreclosed by the mortgagees according to its terms, and in the manner provided by the laws of the State of Idaho.

10. The mortgagor shall endorse over or assign to the trustee all notes, mortgages, contracts or other instruments required to be deposited with the trustee hereunder, so that, in the event of a sale thereof under the power of sale herein given the trustee, title thereto may be given the purchaser at such sale. And the contracts which the mortgagor has with the irrigation districts herein mentioned, and all extensions thereof and amendments thereto that may hereafter be made, are hereby assigned to the mortgagees hereunder as security for the indebtedness secured hereby. The trustee may take all necessary action in his own name, or otherwise, to enforce the payment and collection of notes, contracts and mortgages and other evidence of indebtedness deposited with him hereunder.

11. It is hereby expressly agreed and stipulated between the parties hereto that both partial and full

releases of the lien created by this indenture upon any of the property herein described or referred to may be executed by any of the said mortgagees, and each of said mortgagees is hereby expressly given full power and authority to act for all of said mortgagees in the execution and delivery of such releases, and any release or satisfaction hereof, either in whole or in part, executed by any one of said mortgagees shall be as binding and effective as if executed by all the members of said co-partnership of Maney Bros. & Co.

The execution of this indenture by the mortgagor has been authorized by the Board of Directors of said mortgagor at a meeting thereof this day legally called and held.

*In Witness Whereof*, the said Crane Creek Irrigation Land & Power Company has caused its name to be hereunto subscribed by its President, and its corporate seal affixed, attested by its Secretary; and the said Maney Bros. & Co. have caused their firm name to be hereunto subscribed by a member of said firm, in duplicate, the day and year first above written.

CRANE CREEK IRRIGATION LAND  
& POWER COMPANY,

By E. D. Ford, President.

Attest: E. P. Hall, Secretary.

MANEY BROS. & CO.,

By H. G. Wells.

State of Idaho,  
County of Washington,—ss.

On this 29th day of September in the year 1911,

before me, B. S. Varian, a Notary Public in and for said County and State, personally appeared E. D. Ford, known to me to be the President of the Crane Creek Irrigation Land & Power Company, the corporation which executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate written.

My commission expires the 22nd day of June, 1915.  
 (Seal) (Signed) B. S. VARIAN.

State of Idaho,  
 County of Washington,—ss.

E. D. Ford, being first duly sworn, deposes and says: That he is the President of the Crane Creek Irrigation Land & Power Company, the corporation who executed the foregoing mortgage; that such corporation executed the same as mortgagor and for the uses and purposes therein set forth; that said mortgage was made and executed by said corporation in good faith and without any design or intent to hinder, delay or defraud the creditors of said corporation.

(Signed) E. D. FORD.

*Subscribed and Sworn to* before me this 29th day of September, 1911.

(Seal) B. S. Varian, Notary Public.

Cross-bill filed December 29, 1914.

(Title of Court and Cause.)

*Answer of Crane Creek Irrigation Land & Power Company, a Corporation, and E. D. Ford, A. C. Butterfield and R. C. McKinney, defendants above named, to the Cross-Bill of Maney Brothers and Company, a co-partnership, not waiving but reserving and insisting upon the said defendants' motion to dismiss the said cross-bill heretofore filed and now Pending in this Court.*

I.

The said defendants admit that the Crane Creek Irrigation Land and Power Company, Crane Creek Irrigation District, Sunnyside Irrigation District, The Idaho National Bank, Slick Brothers Construction Company, Limited, are corporations organized and existing under the laws of the State of Idaho, and are citizens respectively thereof; that the C. R. Shaw Wholesale Company is a corporation organized and existing under the laws of the State of Nevada and is a citizen thereof; that the Utah Fire Clay Company is a corporation organized and existing under the laws of the State of Utah and a citizen thereof; that the Portland Wood Pipe Company is a corporation organized and existing under the laws of the State of Oregon and a citizen thereof; that the defendants, Pete March, J. M. Pinckard, F. A. Squier, S. C. Comerford, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, H. H. Begley, James M. Magee, C. A. Smith, J. L. Smith, Claud F. Smith, Henry Whitmore, A. T. Schwab, A. L. Chenoweth, Geo. C. Cater, J. C. Toney, Thomas Sherry, E. H.

Hasbrouch, E. D. Ford, A. G. Butterfield and R. C. McKinney are residents and citizens of the State of Idaho; that the defendant, L. F. Easton, is a resident and citizen of the State of Wisconsin; that the defendant, G. A. Heman, is a resident and citizen of the State of Missouri.

## II.

These defendants admit that the cross-complainant, Maney Brothers and Company, is a co-partnership consisting of J. W. Maney and John Maney, each a citizen and resident of the State of Oklahoma, and Herbert G. Wells and E. J. Wells, each a citizen and resident of the State of Idaho.

## III.

Admit that the matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars (\$3,000.00).

## IV.

Admit that the bill of complaint of the plaintiff, Portland Wood Pipe Company, is brought to foreclose a pretended mechanic's lien alleged to cover an irrigation system, reservoir, water rights and water appropriations, and the rights of way therefor, constructed by the Crane Creek Irrigation Land and Power Company, but deny that it is as a whole the identical irrigation system described in this cross-complainant's mortgage by this cross-bill sought to be foreclosed, and allege that only a part of said system is so included in and described in said mortgage.

## V.

Admit that on the 29th day of September, 1911, the Crane Creek Irrigation Land and Power Company, for a valuable consideration, made and delivered to the cross-complainant herein its promissory note as in the words and figures and for the sum, as set out in said cross-bill in paragraph XIII.

## VI.

Admit that to secure the payment of said note the said Crane Creek Irrigation Land and Power Company on the same day made and delivered to the cross-complainant herein a mortgage, whereby it mortgaged, or attempted to mortgage, to said cross-complainant, the following described property, situate in Washington County, Idaho, to-wit:

(a) That certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West, B. M., Washington County, Idaho, application for right of way for which was filed in the United States Land Office, Boise, Idaho, by one E. D. Ford, on the 3rd day of September, 1907, which said application was approved by Thos. Ryan, Acting Secretary of the Interior, on the 26th day of October, 1907; which said reservoir, as shown by said map (a duplicate of which is on file in the said United States Land Office at Boise, Idaho), will have a storage capacity of approximately seventy thousand six hundred and seventeen (70,617) acre feet, with a dam fifty-nine (59) feet high; and the dam for which said reservoir is situated in the Southeast Quarter (SE $\frac{1}{4}$ ) of the

Southeast Quarter (SE $\frac{1}{4}$ ) of Section Nineteen (19) of said township and range; and all lands situated within said reservoir site, including the right of way secured, as aforesaid, from the Government of the United States.

(b) All canals, ditches, headgates, flumes, pipe lines, laterals and other structures, dams and works used or intended to be used, or required in connection with the distribution of the water from said reservoir, and for carrying and distributing said water to the place or places of intended use, now owned or constructed, or which may hereafter be acquired or constructed by the said Crane Creek Irrigation Land & Power Company, with the rights of way therefor.

(c) All water rights and rights to the use of water in connection with the reservoir and irrigation works hereinbefore described, now owned, or that may hereafter be acquired, by said Crane Creek Irrigation Land & Power Company, and particularly including the following permits issued by the State Engineer of the State of Idaho, all of which permits are now owned and held by the Crane Creek Irrigation Land & Power Company, said permits being issued on the dates and numbered and recorded in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.



Permit No. 6832, recorded Book 20, page 6832, issued Sep. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sep. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

(d) The lands described as follows, excluding from such description the lands subsequently released, as set forth in cross-complainant's cross-bill, to-wit:

The SE $\frac{1}{4}$  of Sec. 5

E $\frac{1}{2}$  of the SE $\frac{1}{4}$ , and the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

E $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Sec. 10

N $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 17

E $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Sec. 17

SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 8

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , and the E $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Sec. 11

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 14

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ , and the N $\frac{1}{2}$  of the NW $\frac{1}{4}$ , and the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 12

Lot 4, and the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 7

All in Township Ten (10) North, Range Four (4) West B. M.

And the E $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 12, Township Ten North Range 5 West, B. M.

All of said lands being patented and situate within the boundaries of the Sunnyside Irrigation District.

The SW $\frac{1}{4}$  of Sec. 27

N $\frac{1}{2}$  of the NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ ,  
and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 13.

All in Township 11 North, Range 4 West, B. M.  
And all patented, and situate within the boundaries of the Crane Creek Irrigation District.

Also, the following described lands, the legal title to which is vested in the State of Idaho, but certificates for the purchase of which, under the laws of the State, are, and at the time of the execution and delivery of the said mortgage were, held by the said Crane Creek Irrigation Land and Power Company, to-wit:

The NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 7

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 8

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 8

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 9

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 10

All being State lands and situate within the boundaries of the Sunnyside Irrigation District, in Township 10 North, Range 4 West, B. M.

The NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 33

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 33

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33

NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 33

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 33

All in Township 11 North, Range 4 West, B. M., and situate within the boundaries of the Crane Creek Irrigation District.

And the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 2, Township 10 North, Range 5 West, B. M.

All within the boundaries of the Sunnyside Irrigation District.

And the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 11

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 13

NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 13

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 14

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

All in Township 11 North, Range 6 West, B. M., and State lands and situate outside of the boundaries of the Sunnyside and Crane Creek Irrigation Districts.

And SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 36

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

All in Township 11 North, Range 5 West, B. M., and all State lands and situate outside of the boundaries of the Sunnyside and Crane Creek Irrigation Districts; together with all rights of way, reservoirs, dams, canals, flumes, pipe lines, ditches and other structures forming a part of said irrigation system, whether then owned by the said Crane Creek Irrigation Land and Power Company, or thereafter constructed or acquired by said Company, with all the easements, rights of way, privileges and appurtenances thereunto belonging or in anywise appertaining, as appears by an alleged copy of said mortgage attached to said cross-bill as Exhibit "A" and made a part thereof.

#### VII.

That said defendants admit that said mortgage was acknowledged, certified and recorded on the 6th day of October, A. D. 1911, in Book 15 of Mortgages, beginning with page 403.

#### VIII.

Admit the allegations of paragraph XVI in said cross-bill, as therein made, and that at the time of filing said cross-bill there was a balance due the said cross-complainant aforesaid of Thirty-five Thousand Nine Hundred Eighty-six and Ten One-hundredths (\$35,986.10) Dollars, with interest thereon from the 27th day of December, 1913, at six per centum per annum.

#### IX.

Admit the default of the Crane Creek Irrigation Land and Power Company in the payment of taxes

and other payments required to be paid, and all allegations made in paragraph XVII of said cross-bill.

X.

Admit all the allegations made in paragraph XVIII of said cross-bill, and particularly that since the delivery of said mortgage the cross-complainant has released from the alleged lien of the said mortgage, the lands, premises and property in said paragraph particularly described.

XI.

Admit the allegations as specifically made in paragraph XIX of the cross-bill.

XII.

Defendants admit that the note and mortgage, hereinbefore mentioned, provide for the payment by the Crane Creek Irrigation Land and Power Company of a reasonable attorney's fee, if suit should be instituted for the collection or foreclosure thereof.

XIII.

Admit the allegations of paragraph XXI of said cross-bill, as therein specifically stated and set forth, except that defendants, upon their information and belief, allege: That the cross-complainant herein is not entitled to, and has no mortgage lien upon, the property of the defendants, Crane Creek Irrigation District and Sunnyside Irrigation District, as in said mortgage and cross-bill asserted.

XIV.

Admit that numerous pretended claims of lien have been filed against the said irrigation system,

lands, rights of way and water rights, arising out of and connected with the construction of the said irrigation system, and that the amount of such liens as claimed is upwards of One Hundred Fifty Thousand Dollars (\$150,000.00). Admit the allegations in said cross-bill made that the said Crane Creek Irrigation Land and Power Company is unable to pay or discharge the said indebtedness; but deny that, in order to properly preserve, protect or maintain the said lands, system, water rights and franchises necessary for the use and operation thereof, or to protect the said cross-complainant, or other pretended lien claimants, a receiver is necessary or that a receiver should be appointed; and deny that the said cross-bill states sufficient facts to authorize the appointment of a receiver.

#### XV.

Admit that after the execution of said note by the Crane Creek Irrigation Land and Power Company, the individual defendants, E. D. Ford, A. G. Butterfield and R. C. McKinney, endorsed the said note in writing and waived presentation, demand, protest and notice of non-payment; but deny that the said endorsements were made or given for valuable or any other consideration.

#### XVI.

These defendants admit that no proceedings of law have been instituted or any other suit or action commenced by or on behalf of the cross-complainant herein, for the foreclosure of its said mortgage or the collection of the amount due cross-complainant.

XVII.

And further answering, these defendants allege: That, as they are informed and verily believe, the Court here has not jurisdiction of the matters and things set forth in the cross-bill of the said cross-complainant herein; and that the controversy herein is solely between citizens of the State of Idaho and not otherwise; and that said cross-bill should be dismissed.

WHEREFORE, having fully answered, these defendants pray that the cross-bill of the cross-complainant herein, Maney Brothers and Company, a co-partnership, be dismissed finally out of the Court.

CRANE CREEK IRRIGATION LAND AND  
POWER COMPANY,

By E. D. Ford, President.

E. D. FORD,

A. G. BUTTERFIELD,

R. C. MCKINNEY,

By B. S. VARIAN,

Residence, Weiser, Idaho,

Solicitor.

---

(Title of Court and Cause.)

*Answer of the Sunnyside Irrigation District, a corporation, defendant above-named, to the Cross-Bill of Maney Brothers and Company, a co-partnership, not waiving but reserving and insisting upon the said defendant's motion to dismiss the said Cross-Bill heretofore filed and now pending in this Court.*

## I.

The said defendant admits that the Crane Creek Irrigation Land and Power Company, Crane Creek Irrigation District, Sunnyside Irrigation District, The Idaho National Bank, Slick Brothers Construction Company, Limited, are corporations organized and existing under the laws of the State of Idaho, and are citizens respectively thereof; that the C. R. Shaw Wholesale Company is a corporation organized and existing under the laws of the State of Nevada and is a citizen thereof; that the Utah Fire Clay Company is a corporation organized and existing under the laws of the State of Utah, and a citizen thereof; that the Portland Wood Pipe Company is a corporation organized and existing under the laws of the State of Oregon, and a citizen thereof; that the defendants, Pete March, J. M. Pinckard, F. A. Squier, S. C. Comerford, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, H. H. Begley, James M. Magee, C. A. Smith, J. L. Smith, Geo. F. Smith, Claud F. Smith, Henry Whitmore, A. T. Schwab, A. L. Chenoweth, George C. Cater, J. C. Toney, Thomas Sherry, E. H. Hasbrouch, E. D. Ford, A. G. Butterfield and R. C. McKinney are residents and citizens of the State of Idaho; that the defendant L. F. Easton is a resident and citizen of the State of Wisconsin; that the defendant G. A. Heman is a resident and citizen of the State of Missouri.

## II.

This defendant admits that the cross-complainant, Maney Brothers & Company, is a co-partnership con-



sisting of J. W. Maney and John Maney, each a citizen and resident of the State of Oklahoma, and Herbert G. Wells and E. J. Wells, each a citizen and resident of the State of Idaho.

III.

Admits that the matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand (\$3,000.00) Dollars.

IV.

Admits that the bill of complaint of the plaintiff, Portland Wood Pipe Company, is brought to foreclose a pretended mechanic's lien alleged to cover an irrigation system, reservoir, water rights and water appropriations and the rights of way therefor, constructed by the Crane Creek Irrigation Land and Power Company, but denies that it is as a whole the identical irrigation system described in this cross-complainant's mortgage by this cross-bill sought to be foreclosed, and alleges that only a part of said system is so included in and described in said mortgage.

V.

Admits that on the 29th day of September, 1911, the Crane Creek Irrigation Land and Power Company for a valuable consideration made and delivered to the cross-complainant herein its promissory note as in words and figures and for the sum as set out in said cross-bill in paragraph XIII.

VI.

Admits that to secure the payment of said note the

said Crane Creek Irrigation Land and Power Company on the same day made and delivered to the cross-complainant herein a mortgage whereby it mortgaged or attempted to mortgage to said cross-complainant, the following described property, situate in Washington County, Idaho, to-wit:

(a) A certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West of the Boise Meridian, application for right of way for which was filed in the United States Land Office, Boise, Idaho, by one E. D. Ford, on the 3rd day of September, 1907, which said application was approved by Thomas Ryan, Acting Secretary of the Interior, on the 26th day of October, 1907, which said reservoir, as shown by the map (a duplicate of which is on file in the said United States Land Office at Boise, Idaho), will have a storage capacity of approximately seventy thousand six hundred and seventeen (70,617) acre feet, with a dam fifty-nine (59) feet high; and the dam for which said reservoir (is intended) is situated in the Southeast (SE) quarter of the Southeast (SE) quarter of Section 19 of said township and range; and all lands situated within said reservoir site, including the right of way secured, as aforesaid, from the Government of the United States.

(b) All canals, ditches, headgates, flumes, pipe lines, laterals and other structures, dams and works used or intended to be used, or required in connection with the distribution of the water from said reservoir, and for carrying and distributing said water

to the places of intended use, now owned or constructed, or which may hereafter be acquired or constructed by the said Crane Creek Irrigation Land and Power Company, with the rights of way therefor.

(c) All water rights and rights to the use of water in connection with the reservoir and irrigation works hereinbefore described, now owned, or that may hereafter be acquired, by said Crane Creek Irrigation Land and Power Company, and particularly including the following permits issued by the State Engineer of the State of Idaho, said permits being issued on the dates and numbered and recorded in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.

Permit No. 6832, recorded Book 20, page 6832, issued Sep. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sep. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

(d) The lands described as follows, excluding from such description the lands subsequently released as set forth in cross-complainant's cross-bill, to-wit:

The SE $\frac{1}{4}$  of Sec. 5

E $\frac{1}{2}$  of the SE $\frac{1}{4}$ , and the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

E $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Sec. 10

N $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 17

E $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Sec. 17

SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 8

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , and the E $\frac{1}{2}$  of the SW $\frac{1}{4}$   
of Sec. 11

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 14

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ , and the N $\frac{1}{2}$  of the NW $\frac{1}{4}$ ,  
and the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 12

Lot No. 4, and the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 7

All in Township Ten North, Range Four West,  
B. M.

And the E $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 12, Township Ten  
North, Range 5 West, B. M.

All of said lands being patented and situate with-  
in the boundaries of the Sunnyside Irrigation Dis-  
trict.

The SW $\frac{1}{4}$  of Sec. 27

N $\frac{1}{2}$  of the NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ ,  
and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 13

All in Township 11 North, Range 4 West, B. M.,  
and all patented and situate within the boundaries  
of the Crane Creek Irrigation District.

Also, the following described lands, the legal title  
to which is vested in the State of Idaho, but certifi-  
cates for the purchase of which under the laws of the  
State, are and at the time of the execution and de-  
livery of the said mortgage were, held by the said  
Crane Creek Irrigation Land and Power Company,  
to-wit:

The NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9  
NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 9  
SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 9  
SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 7  
NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 8  
NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 8  
NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 9  
SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10  
NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 10

All being State lands and situate within the boundaries of the Sunnyside Irrigation District in Township 10 North of Range 4 West of the Boise Meridian.

The NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 33  
SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 33  
NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 33  
NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 33  
SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 33  
SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 33  
NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 33  
NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 33

All in Township 11 North of Range 4 West of the Boise Meridian within the boundaries of the Crane Creek Irrigation District.

And the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 2, Township 10 North, Range 5 West of the Boise Meridian.

All within the boundaries of the Sunnyside Irrigation District.

And the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10  
SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10

SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10  
 NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 10  
 NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 10  
 SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 10  
 SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 10  
 NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 11  
 NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 13  
 NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 13  
 NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 14  
 NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 15  
 NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 15  
 SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 15

All in Township 11 North of Range 6 West of the Boise Meridian and State lands situate outside of the boundaries of the Sunnyside and Crane Creek Irrigation Districts.

And SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 36  
 SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 36  
 SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 36  
 NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 36  
 NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 36

All in Township 11 North of Range 5 West of the Boise Meridian and all State lands and situate outside of the boundaries of the Sunnyside and Crane Creek Irrigation Districts.

Together with all rights of way, reservoirs, dams, canals, flumes, pipe lines, ditches and other structures forming a part of said irrigation system, whether then owned by the said Crane Creek Irrigation Land and Power Company, or thereafter constructed or acquired by said Company, with all the ease-

ments, rights of way, privileges and appurtenances thereunto belonging or in anywise appertaining, as appears by an alleged copy of said mortgage attached to said cross-bill as "Exhibit A" and made a part thereof.

VII.

The said defendants admit that said mortgage was acknowledged, certified and recorded on the 6th day of October, A. D. 1911, in Book 15 of Mortgages, beginning with page 403.

VIII.

Admits the allegations of paragraph XVI in said cross-bill as therein made, and that at the time of filing said cross-bill there was a balance due the said cross-complainant aforesaid, of Thirty-five Thousand Nine Hundred Eighty-six and Ten One-hundredths (\$35,986.10) Dollars, with interest thereon from the 27th day of December, 1913, at six per centum per annum.

IX.

Admit the default of the Crane Creek Irrigation Land and Power Company in the payment of taxes and other payments required to be paid, and all allegations made in paragraph XVII of said cross-complaint.

X.

Admits all the allegations made in paragraph XVIII of said cross-complaint and particularly that since the delivery of said mortgage the cross-complainant has released from the alleged lien of the

said mortgage, the lands, premises and property in said paragraph particularly described.

### XI.

Admits the allegations as specifically made in paragraph XIX of the cross-complaint.

### XII.

Admits that the mortgage aforesaid provides for the payment by the Crane Creek Irrigation Land and Power Company of a reasonable attorney's fee for foreclosing said mortgage or bringing suit thereon. Defendants admit that the note and mortgage hereinbefore mentioned provide for the payment by the Crane Creek Irrigation Land and Power Company of a reasonable attorney's fee if suit should be instituted for the collection or foreclosure thereof; and in this behalf defendants allege that cross-complainant is not entitled to attorney's fee, reasonable or otherwise, for the foreclosure of said mortgage; and deny that Four Thousand (\$4,000.00) Dollars or any other sum is a reasonable attorney's fee for such foreclosure.

### XIII.

Admits the allegations of paragraph XXI of said cross-bill as therein specifically stated and set forth, except that defendant, upon its information and belief, alleges: That the cross-complainant herein is not entitled to and has no mortgage lien upon the property of the defendant, Crane Creek Irrigation District, or of this defendant, as in said mortgage and cross-complaint asserted.



## XIV.

Admits that numerous pretended claims of lien have been filed against the said irrigation system, lands, rights of way and water rights, arising out of and connected with the construction of the said irrigation system, and that the amount of such liens as claimed is upwards of One Hundred Fifty Thousand (\$150,000.00) Dollars; but as to the allegations in said cross-complaint made that the said Crane Creek Irrigation Land and Power Company is unable to pay or discharge the said indebtedness, this defendant has not sufficient knowledge to enable it to admit or deny the same; and the said defendant denies, that in order to properly preserve, protect or maintain the said lands, system, water rights and franchises necessary for the use and operation thereof, and to protect the said cross-complainant and other pretended lien claimants, a Receiver should be appointed; and deny that a receivership is necessary or authorized by the facts in said cross-bill stated.

## XV.

Admits that after the execution of said note by the Crane Creek Irrigation Land and Power Company, the individual defendants, E. D. Ford, A. G. Butterfield and R. C. McKinney, endorsed the said note in writing and waived presentation, demand, protest and notice of non-payment; but denies that the said endorsements were made or given for valuable or any other consideration.

## XVI.

This defendant admits that no proceedings of law

have been instituted or any other suit or action commenced by or on behalf of the cross-complainant herein, for the foreclosure of its said mortgage or the collection of the amount due cross-complainant.

## XVII.

Further answering the said cross-bill, the defendant, Sunnyside Irrigation District, alleges:

That it is, and during all the times hereinbefore and hereinafter mentioned was, a corporation organized and existing as an irrigation district under and by virtue of the laws of the State of Idaho and particularly under the provisions of Title 14, Revised Codes of Idaho, and the laws supplemental and amendatory thereof, for the purposes of supplying that portion of the public owning, occupying, using or cultivating lands within its boundaries, with water from the public streams and public unappropriated waters, for household, domestic and irrigation purposes, and the cultivation of lands; and that its irrigation system, works, reservoir site and water rights, as described in the cross-bill herein and in this answer, during all the times in said cross-bill and in this answer mentioned, were, and now are, dedicated to a public use, as aforesaid; that this defendant has hereinbefore issued its bonds at the par value of Five Hundred Thirty-seven Thousand Eight Hundred (\$537,800.00) Dollars in the aggregate, which said bonds have been sold and distributed to numerous individuals and corporations in different states, and which said bonds are by force of the laws of the State of Idaho charged as a first lien upon this

defendant's irrigation system, works, water rights and reservoir site; that on the 25th day of June, A. D. 1909, the petition for the organization of this defendant as an irrigation district was filed with the Clerk of the Board of County Commissioners of the County of Washington, Idaho, signed by a majority of the holders of title and evidences of title to lands susceptible of one mode of irrigation from a common source and by the same system of works, and by the holders of title or evidences of title to more than one-fourth part of the total area of the lands in the proposed district assessable for the purposes of the district, and setting forth the proposed boundaries and describing with the degree of certainty required by law in a tax roll, all the lands proposed to be included in the district, and in all other particulars conforming to the requirements of the law; and that said petition was accompanied by a map of the proposed district showing the location of the proposed canal and other works, et cetera, and in all particulars complying with the statute in such case made and provided; and that thereafter such proceedings were had before the Board of County Commissioners of Washington County, Idaho, in which the said lands and property is situated, to-wit, on the 17th day of August, A. D. 1909, that the said Board of County Commissioners ordered an election to be held pursuant to law, and thereafter, to-wit, on the 20th day of September, 1909, an election was duly held in the said Sunnyside Irrigation District, defendant herein, and thereafter upon a canvass of the votes cast

at such election, the said Board of County Commissioners on the 25th day of September, A. D. 1909, duly found and determined that more than two-thirds of the votes cast at said election were cast in favor of the organization of the said district, and that the same was duly organized as the Sunnyside Irrigation District.

And said defendant further alleges:

That subsequently, to-wit, on the 31st day of August, A. D. 1911, a petition on behalf of said district was by its Board of Directors duly filed with the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Washington, praying for approval and confirmation of the proceedings theretofore had, and for the organization of said District, and thereafter, upon a hearing had as provided by law, the said District Court did on the 30th day of September, 1911, make and enter its decree approving and confirming all the proceedings, acts and things done and performed by the said Board of County Commissioners and the Board of Directors in the matter of the organization of said District and did adjudge each and every of them to be legal and valid; and that thereupon an appeal was taken from said decree of said Court to the Supreme Court of the State of Idaho, which said Court did on the second day of January, A. D. 1912, enter its final judgment affirming the judgment of the Court below.

And said defendant further alleges:

That after the organization of said defendant as

the Sunnyside Irrigation District, as aforesaid, to-wit, on the 29th day of September, A. D. 1911, Maney Brothers and Company, a co-partnership, cross-complainant herein, made and entered into a contract with the Crane Creek Irrigation Land and Power Company, which last-named company was an original contractor in the construction of the system, works and structures appertaining to the irrigation system of said defendant, whereby it agreed to furnish certain materials and perform certain labor in the matter of such construction for the said Crane Creek Irrigation Land and Power Company for approximately the sum of money mentioned in the note and mortgage set up and alleged by said cross-complainant in its cross-bill herein, and before any materials had been furnished or work performed, the said cross-complainant procured from the said Crane Creek Irrigation Land and Power Company the note and mortgage aforesaid; that said mortgage purported to include and create a lien upon the lands hereinbefore in this answer described as being within the boundaries of said defendant's district, theretofore and then dedicated to the public uses aforesaid, and contracted by the said Crane Creek Irrigation Land and Power Company to be conveyed to said defendant, Sunnyside Irrigation District; and that said mortgage purported to include and create a lien upon all the reservoirs, reservoir sites, canals, ditches, head gates, flumes, pipe lines, dams, laterals and other works and structures necessary and required for the public purposes aforesaid in the dis-

tribution of waters contemplated by the statutes in such cases made and provided, and also all the permits and privileges which had been contracted to be conveyed to said defendant, Sunnyside Irrigation District.

And said defendant further alleges:

That in all the premises the said cross-complainant as a co-partnership and the individual members thereof had actual knowledge and notice of the character of said lands and property and the dedication thereof to public uses, and of the contract made by the Crane Creek Irrigation Land and Power Company with said defendant.

In consideration of the premises said defendant alleges upon its information and belief that the said Crane Creek Irrigation Land and Power Company was not authorized in law to charge the property aforesaid, and as described in the said mortgage and cross-complaint herein, with the mortgage lien for the payment of the costs of construction as hereinbefore stated, and that the said cross-complainant herein, Maney Brothers and Company, a co-partnership, had no authority to so contract with the said Crane Creek Irrigation Land and Power Company, and that the said mortgage is not and can not be charged as a lien upon or against any of the lands and property therein described, which are situate within the boundaries of this defendant, Sunnyside Irrigation District, or which is necessarily connected with or required for the effected use and operation of its said system, and to that extent the same is null and void.

WHEREFORE, having fully answered said defendant prays that the pretended claim of mortgage lien asserted by the cross-complainant herein be denied; that cross-complainant take nothing by its said cross-bill against said defendant or its property; that the said cross-bill be dismissed as against said defendant; and that it have and recover its reasonable costs in this behalf lawfully incurred.

SUNNYSIDE IRRIGATION DISTRICT,

By August Brockman, President.

ED. R. COULTER, Weiser,

N. M. RUICK, Boise,

C. S. VARIAN, Salt Lake City, Utah,

Solicitors for Sunnyside Irrigation District.

Filed February 3rd, 1915.

---

(Title of Court and Cause.)

*Answer of the Crane Creek Irrigation District, a corporation, above-named defendant, to the Cross-Bill of Maney Brothers and Company, a co-partnership, not waiving but reserving and insisting upon the said defendant's motion to dismiss the said Cross-Bill heretofore filed and now pending in this Court.*

I.

The said defendant admits that the Crane Creek Irrigation Land and Power Company, Crane Creek Irrigation District, Sunnyside Irrigation District, The Idaho National Bank, Slick Brothers Construction Company, Limited, are corporations organized

and existing under the laws of the State of Idaho, and are citizens respectively thereof; that the C. R. Shaw Wholesale Company is a corporation organized and existing under the laws of the State of Nevada, and is a citizen thereof; that The Utah Fire Clay Company is a corporation organized and existing under the laws of the State of Utah, and a citizen thereof; that the Portland Wood Pipe Company is a corporation organized and existing under the laws of the State of Oregon, and a citizen thereof; that the defendant, Pete March, J. M. Pinckard, F. A. Squier, S. C. Comerford, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, H. H. Begley, James M. Magee, C. A. Smith, J. L. Smith, Geo. F. Smith, Claud F. Smith, Henry Whitmore, A. T. Schwab, A. L. Chenoweth, George C. Cater, J. C. Toney, Thomas Sherry, E. H. Hasbrouch, E. D. Ford, A. G. Butterfield and R. C. McKinney are residents and citizens of the State of Idaho; that the defendant L. F. Easton is a resident and citizen of the State of Wisconsin; that the defendant G. A. Heman is a resident and citizen of the State of Missouri.

## II.

This defendant admits that the cross-complainant, Maney Brothers & Company, is a co-partnership consisting of J. W. Maney and John Maney, each a citizen and resident of the State of Oklahoma, and Herbert G. Wells and E. J. Wells, each a citizen and resident of the State of Idaho.

## III.

Admits that the matter in controversy, exclusive



of interest and costs, exceeds the sum of Three Thousand (\$3,000.00) Dollars.

IV.

Admits that the bill of complaint of the plaintiff, Portland Wood Pipe Company, is brought to foreclose a pretended mechanic's lien alleged to cover an irrigation system, reservoir, water rights and water appropriations and the rights of way therefor, constructed by the Crane Creek Irrigation Land and Power Company, but denies that it is as a whole the identical irrigation system described in this cross-complainant's mortgage by this cross-bill sought to be foreclosed, and alleges that only a part of said system is so included in and described in said mortgage.

V.

Admits that on the 29th day of September, 1911, the Crane Creek Irrigation Land and Power Company for a valuable consideration made and delivered to the cross-complainant herein its promissory note as in words and figures and for the sum as set out in said cross-bill in paragraph XIII.

VI.

Admits that to secure the payment of said note the said Crane Creek Irrigation Land and Power Company on the same day made and delivered to the cross-complainant herein a mortgage whereby it mortgaged or attempted to mortgage to said cross-complainant the following described property, situate in Washington County, Idaho, to-wit:

(a) A certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West of the Boise Meridian, application for right of way for which was filed in the United States Land Office, Boise, Idaho, by one E. D. Ford, on the 3rd day of September, 1907, which said application was approved by Thomas Ryan, Acting Secretary of the Interior, on the 26th day of October, 1907; which said reservoir, as shown by the map (a duplicate of which is on file in the said United States Land Office at Boise, Idaho), will have a storage capacity of approximately seventy thousand six hundred and seventeen (70,617) acre feet, with a dam fifty-nine (59) feet high; and the dam for which said reservoir (is intended) is situated in the Southeast (SE) quarter of the Southeast (SE) quarter of Section 19 of said township and range; and all lands situated within said reservoir site, including the right of way secured, as aforesaid, from the Government of the United States.

(b) All canals, ditches, headgates, flumes, pipe lines, laterals and other structures, dams and works used or intended to be used, or required in connection with the distribution of the water from said reservoir, and for carrying and distributing said water to the places of intended use, now owned or constructed, or which may hereafter be acquired or constructed by the said Crane Creek Irrigation Land and Power Company, with the rights of way therefor.

(c) All water rights and rights to the use of water in connection with the reservoir and irrigation

works hereinbefore described, now owned, or that may hereafter be acquired, by said Crane Creek Irrigation Land and Power Company, and particularly including the following permits issued by the State Engineer of the State of Idaho, said permits being issued on the dates and numbered and recorded in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.

Permit No. 6832, recorded Book 20, page 6832, issued Sep. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sep. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

(d) The lands described as follows, excluding from such description the lands subsequently released as set forth in cross-complainant's cross-bill, to-wit:

The SE $\frac{1}{4}$  of Sec. 5

E $\frac{1}{2}$  of the SE $\frac{1}{4}$ , and the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

E $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Sec. 10

N $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 17

E $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Sec. 17

SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 8

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , and the E $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Sec. 11

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 14

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ , and the N $\frac{1}{2}$  of the NW $\frac{1}{4}$ ,  
and the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 12

Lot No. 4, and the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 7

All in Township Ten North, Range Four West,  
B. M.

And the E $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 12, Township  
Ten North, Range 5 West, B. M.

All of said lands being patented and situate within  
the boundaries of the Sunnyside Irrigation District.

The SW $\frac{1}{4}$  of Sec. 27

N $\frac{1}{2}$  of the NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ ,  
and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 13

All in Township 11 North, Range 4 West, B. M.,  
and all patented and situate within the boundaries  
of the Crane Creek Irrigation District.

Also the following described lands, the legal title  
to which is vested in the State of Idaho, but certifi-  
cates for the purchase of which, under the laws of  
the State, are, and at the time of the execution and  
delivery of the said mortgage were, held by the said  
Crane Creek Irrigation Land and Power Company,  
to-wit:

The NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 9

SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 9

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 7

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 8

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 8

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 9

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 10

All being State lands and situate within the boundaries of the Sunnyside Irrigation District in Township 10 North of Range 4 West of the Boise Meridian.

And NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 33

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 33

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 33

NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 33

SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 33

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 33

NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 33

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 33

All in Township 11 North of Range 4 West of the Boise Meridian within the boundaries of the Crane Creek Irrigation District.

And the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 2, Township 10 North, Range 5 West of the Boise Meridian.

All within the boundaries of the Sunnyside Irrigation District.

And the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10

SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 10

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 10

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 10

SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 10

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 11

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 13

NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 13

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 14

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 15

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 15

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 15

All in Township 11 North of Range 6 West of the Boise Meridian and State lands and situate outside of the boundaries of the Sunnyside and Crane Creek Irrigation Districts.

And SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 36

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 36

SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 36

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 36

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 36

All in Township 11 North of Range 5 West of the Boise Meridian and all State lands and situate outside of the boundaries of the Sunnyside and Crane Creek Irrigation Districts.

Together with all rights of way, reservoirs, dams, canals, flumes, pipe lines, ditches and other structures forming a part of said irrigation system, whether then owned by the said Crane Creek Irrigation Land and Power Company, or thereafter constructed or acquired by said Company, with all the easements, rights of way, privileges and appurtenances thereunto belonging or in anywise appertaining, as appears by an alleged copy of said mortgage attached to said cross-bill as "Exhibit A" and made a part thereof.

## VII.

The said defendant admits that said mortgage was acknowledged, certified and recorded on the 6th day of October, A. D. 1911, in Book 15 of Mortgages, beginning with page 403.

VIII.

Admits the allegations of paragraph XVI in said cross-bill as therein made, and that at the time of filing said cross-bill there was a balance due the said cross-complainant aforesaid of Thirty-five Thousand Nine Hundred Eighty-six and Ten One-hundredths (\$35,986.10) Dollars, with interest thereon from the 27th day of December, 1913, at six per centum per annum.

IX.

Admits the default of the Crane Creek Irrigation Land and Power Company in the payment of taxes and other payments required to be paid, and all allegations made in paragraph XVII of said cross-complaint.

X.

Admits all the allegations made in paragraph XVIII of said cross-complaint and particularly that since the delivery of said mortgage the cross-complainant has released from the alleged lien of the said mortgage, the lands, premises and property in said paragraph particularly described.

XI.

Admits the allegations as specifically made in paragraph XIX of the cross-complaint.

XII.

Admits that the mortgage aforesaid provides for the payment by the Crane Creek Irrigation Land and Power Company of a reasonable attorney's fee for foreclosing said mortgage or bringing suit thereon.

Defendants admit that the note and mortgage hereinbefore mentioned provide for the payment by the Crane Creek Irrigation Land and Power Company of a reasonable attorney's fee if suit should be instituted for the collection or foreclosure thereof; and in this behalf defendants allege that cross-complainant is not entitled to attorney's fee, reasonable or otherwise, for the foreclosure of said mortgage; and deny that Four Thousand (\$4,000.00) Dollars or any other sum is a reasonable attorney's fee for such foreclosure.

### XIII.

Admits the allegations of paragraph XXI of said cross-bill as therein specifically stated and set forth, except that defendants, upon their information and belief, alleges: That the cross-complainant herein is not entitled to, and has no mortgage lien upon, the property of the defendant, Crane Creek Irrigation District, or of the defendant, Sunnyside Irrigation District, as in said mortgage and cross-complaint asserted.

### XIV.

Admits that numerous pretended claims of lien have been filed against the said irrigation system, lands, rights of way and water rights, arising out of and connected with the construction of said irrigation system, and that the amount of such liens as claimed is upwards of One Hundred Fifty Thousand (\$150,000.00) Dollars; but as to the allegations in said cross-complaint made that the said Crane Creek Ir-



rigation Land and Power Company is unable to pay or discharge the said indebtedness, this defendant has not sufficient knowledge to enable it to admit or deny the same; and the said defendant denies that in order to properly preserve, protect or maintain the said lands, system, water rights and franchises necessary for the use and operation thereof, and to protect the said cross-complainant and other pretended lien claimants, a Receiver should be appointed; and deny that a receivership is necessary or authorized by the facts in said cross-bill stated.

#### XV.

Admits that after the execution of said note by the Crane Creek Irrigation Land and Power Company, the individual defendants, E. D. Ford, A. G. Butterfield and R. C. McKinney, endorsed the said note in writing and waived presentation, demand, protest and notice of non-payment; but deny that the said endorsements were made or given for valuable or any other consideration.

#### XVI.

This defendant admits that no proceedings of law have been instituted or any other suit or action commenced by or on behalf of the cross-complainant herein, for the foreclosure of its said mortgage or the collection of the amount due cross-complainant.

#### XVII.

Further answering the said cross-bill, the defendant, Crane Creek Irrigation District, alleges:

That it is, and during all the times hereinbefore

and hereinafter mentioned was a corporation organized and existing as an irrigation district under and by virtue of the laws of the State of Idaho and particularly under the provisions of Title 14, Revised Codes of Idaho, and the laws supplemental and amendatory thereof, for the purposes of supplying that portion of the public owning, occupying, using, or cultivating lands within its boundaries, with water from the public streams and public unappropriated waters, for household, domestic, and irrigation purposes, and the cultivation of lands; and that its irrigation system, works, reservoir site, and water rights, as described in the cross-bill herein and in this answer, during all the times in said cross-bill and in this answer mentioned, were, and now are, dedicated to a public use, as aforesaid; that this defendant has hereinbefore issued its bonds at the par value of Two Hundred Forty-six Thousand Nine Hundred (\$246,900.00) Dollars, in the aggregate, which said bonds have been sold and distributed to numerous individuals and corporations in different states, and which said bonds are by force of the laws of the State of Idaho, charged as a first lien upon this defendant's irrigation system, works, water rights, and reservoir site; that on the 25th day of June, A. D. 1909, the petition for the organization of this defendant as an irrigation District was filed with the Clerk of the Board of County Commissioners of the County of Washington, Idaho, signed by a majority of the holders of title and evidences of title to lands susceptible of one mode of irrigation from

a common source and by the same system of works, and by the holders of title or evidences of title to more than one-fourth part of the total area of the lands in the proposed district assessable for the purposes of the district, and setting forth the proposed boundaries and describing with the degree of certainty required by law in a tax roll, all the lands proposed to be included in the district, and in all other particulars conforming to the requirements of the law; and that said petition was accompanied by a map of the proposed district showing the location of the proposed canal and other works et cetera, and in all particulars complying with the statute in such case made and provided; and that thereafter such proceedings were had before the Board of County Commissioners of Washington County, Idaho, in which the said lands and property is situated, to-wit, on the 17th day of August, A. D. 1909, that the said Board of County Commissioners ordered an election to be held pursuant to law, and thereafter, to-wit, on the 20th day of September, 1909, an election was duly held in the said Crane Creek Irrigation District, defendant herein, and thereafter upon a canvass of the votes cast at such election, the said Board of County Commissioners on the 25th day of September, A. D. 1909, duly found and determined that more than two-thirds of the votes cast at said election were cast in favor of the organization of the said district, and that the same was duly organized as the Crane Creek Irrigation District.

And said defendant further alleges:

That subsequently, to-wit, on the 31st day of August, A. D. 1911, a petition on behalf of said district was by its Board of Directors duly filed with the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Washington, praying for approval and confirmation of the proceedings theretofore had, and for the organization of said District, and thereafter upon a hearing had as provided by law, the said District Court did on the 30th day of September, 1911, make and enter its decree approving and confirming all the proceedings, acts, and things done and performed by the said Board of County Commissioners and the Board of Directors in the matter of the organization of said District and did adjudge each and every of them to be legal and valid; and that thereupon an appeal was taken from said decree of said Court to the Supreme Court of the State of Idaho, which said Court did on the second day of January, A. D. 1912, enter its final judgment affirming the judgment of the Court below:

And said defendant further alleges:

That after the organization of said defendant as the Crane Creek Irrigation District, as aforesaid, to-wit, on the 29th day of September, A. D. 1911, Maney Brothers and Company, a co-partnership, cross-complainant herein, made and entered into a contract with the Crane Creek Irrigation Land and Power Company, which last named company was an original contractor in the construction of the system, works, and structures appertaining to the irrigation

system of said defendant, whereby it agreed to furnish certain materials and perform certain labor in the matter of such construction for the said Crane Creek Irrigation Land and Power Company for approximately the sum of money mentioned in the note and mortgage set up and alleged by said cross-complainant herein, and before any materials has been furnished or work performed, the said cross-complainant procured from the said Crane Creek Irrigation Land and Power Company the note and mortgage aforesaid; that said mortgage purported to include and create a lien upon the lands hereinbefore in this answer described as being within boundaries of said defendant's district, theretofore and then dedicated to the public uses aforesaid, and contracted by the said Crane Creek Irrigation Land and Power Company to be conveyed to said defendant, Crane Creek Irrigation District; and that said mortgage purported to include and create a lien upon all the reservoirs, reservoir sites, canals, ditches, head-gates, flumes, pipe lines, dams, laterals, and other works and structures necessary and required for the public purposes aforesaid in the distribution of waters contemplated by the statutes in such cases made and provided, and also all the permits and privileges which had been contracted to be conveyed to said defendant, Crane Creek Irrigation District.

And the said defendant further alleges:

That in all the premises the said cross-complainant as a co-partnership and the individual members thereof had actual knowledge and notice of the char-

acter of said lands and property and the dedications thereof to public uses, and of the contract made by the Crane Creek Irrigation Land and Power Company with said defendant.

In consideration of the premises said defendant alleges upon its information and belief that the said Crane Creek Irrigation Land and Power Company was not authorized in law to charge the property aforesaid, and as described in the said mortgage and cross-complaint herein, with the mortgage lien for the payment of the costs of construction as hereinbefore stated, and that the said cross-complainant herein, Maney Brothers and Company, a co-partnership, had no authority to so contract with the said Crane Creek Irrigation Land and Power Company, and that the said mortgage is not and can not be charged as a lien upon or against any of the lands and property therein described, which are situate within the boundaries of this defendant, Crane Creek Irrigation District, or which is necessarily connected with or required for the effected use and operation of its said system and to that extent the same is null and void.

*Wherefore*, having fully answered said defendant prays that the pretended claim of mortgage lien asserted by the cross-complainant herein be denied; that cross-complainant take nothing by its said cross-bill against said defendant or its property; that the said cross-bill be dismissed as against said defend-

ant; and that it have and recover its reasonable costs in this behalf lawfully incurred.

CRANE CREEK IRRIGATION DISTRICT,

By Chas. C. Cleary, President.

ED. R. COULTER,

Weiser,

N. M. RUICK,

Boise,

C. S. VARIAN,

Salt Lake City, Utah,

Solicitors for Crane Creek Irrigation District.

Filed February 3rd, 1915.

---

(Title of Court and Cause.)

*Statement of Evidence Under Equity Rule 75 on Appeal of Maney Brothers & Company, Cross-Complainant.*

*Be It Remembered*, That this cause came regularly on for trial before the Court, sitting in equity on March 25th, 1915, on the cross-complaint of the defendants and cross-complainants Maney Brothers & Company, and the issues made thereon by the answers of the cross-defendants Crane Creek Irrigation District, Sunnyside Irrigation District, Crane Creek Irrigation Land & Power Company, E. D. Ford, A. G. Butterfield, and R. C. McKinney. Whereupon the following proceedings were had:

Jesse T. Johnson, being called and sworn as a witness for said cross-complainants, testified as follows:

"I am a bookkeeper for Maney Brothers & Company. I was in their employ in that capacity in Sep-

tember, 1911, and have been ever since. I am familiar with the business transactions which Maney Brothers & Company had with the Crane Creek Irrigation Land & Power Company. The paper marked 'Maney Bros. Exhibit No. 1' dated September 29, 1911, is a note which Maney Brothers & Company received from the Crane Creek Irrigation Land & Power Company. It was given for the construction of what is commonly known as the Crane Creek Reservoir. There is due on that note \$35,986.10 with interest at 6% from December 27, 1913."

(The note referred to was admitted in evidence and is identical with the copy thereof set out in the exhibit attached to the Cross-Bill of Maney Brothers & Company).

"Paper marked 'Maney Bros. Ex. 2' is the mortgage securing the note which I have just identified. None of the collateral mentioned in that mortgage has been deposited with the trustee therein named."

(The mortgage referred to was admitted in evidence and is identical with the copy thereof attached as an exhibit to the Cross-Bill of Maney Brothers & Company).

"Paper marked 'Maney Bros. Exhibit No. 3' is a certified copy of the minutes of the special meeting of the Board of Directors of the Crane Creek Irrigation Land & Power Company held September 29, 1911, and it sets out a copy of the mortgage that has been introduced in evidence as Exhibit No. 2, and also



a copy of the contract. That contract was entered into by Maney Bros.”

The exhibit referred to as “Maney Bros. Exhibit No. 3” is in words and figures following, except that the note and mortgage therein referred to have been omitted therefrom for the reason that they are already set out in the Cross-Bill, to-wit:

“MINUTES OF A SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF THE CRANE  
CREEK IRRIGATION LAND AND POWER  
COMPANY.

Held September 29, 1911.

Minutes of a special meeting of the Board of Directors of the Crane Creek Irrigation Land and Power Company, held at the office of the Company, at Weiser, Idaho, on the 29th day of September, 1911, there being present:

E. D. Ford, President.

A. G. Butterfield, Vice President.

R. C. McKinney.

Absent and not voting:

E. M. Heigho and

C. C. Conant (deceased).

The meeting was called to order by the President, and the Secretary proceeded to take minutes.

The Secretary then announced that since the last meeting of the board Director C. C. Conant had died, leaving a vacancy in the board of directors.

The President then read a waiver of notice of the

time, place and objects of the meeting signed by Director E. M. Heigho.

On motion duly made by R. C. McKinney, seconded by A. G. Butterfield, the following resolution was unanimously adopted:

*Whereas*, it is deemed expedient and for the best interests of the Crane Creek Irrigation Land and Power Company to enter into a contract with Maney Brothers & Company, for the building of the dam of this company's reservoir, known as the Crane Creek Reservoir, in Washington County, Idaho, to a height of forty-four feet, for the approximate consideration of \$87,000.00; and

*Whereas*, a contract has this day been negotiated with the said Maney Brothers & Company by the President of this corporation providing for the construction of said dam to the height of forty-four feet, as aforesaid, which contract is according to the following tenor, to-wit:

#### CONTRACT.

*This Agreement*, Made and entered into this 29th day of September, A. D. 1911, by and between Maney Bros. & Co., (a co-partnership consisting of J. W. Maney, residing at Oklahoma City, Oklahoma, John Maney, residing at El Reno, Oklahoma, and Herbert G. Wells and E. J. Wells, both residing at Boise, Idaho), the parties of the first part, (hereinafter for convenience called the 'Contractors'), and the Crane Creek Irrigation Land & Power Company, a corporation organized under the laws of the State

of Idaho, the party of the second part, (hereinafter for convenience called the ('Company'), witnesseth:

That in consideration of the covenants and agreements herein contained and to be kept and performed by the Contractors, and the payments to be made and covenants to be performed as hereinafter provided by the Company, it is mutually covenanted and agreed as follows:

I.

The Contractors agree that they will, under the supervision and direction of the engineer of the Company, place the following material in that certain dam described in the specifications hereto attached at Exhibit 'A' and in the supplementary specifications hereto attached as Exhibit 'B', which said dam is known as the 'Crane Creek Dam' and situated in Section 19, Township 12 North, Range 2 West, B. M., Washington County, Idaho, to-wit:

1. Forty thousand (40,000) cubic yards of earth, the same to be measured in borrow pits.

2. One thousand and ten (1,010) cubic yards of concrete, to be placed in core wall, tunnel lining and retaining wall and around headgates, as may be directed by the engineer of the Company.

3. One thousand (1,000) cubic yards of rip-rapping on upstream side of dam, and four hundred (400) cubic yards of broken stone or gravel under said riprap on face of upstream embankment.

4. To construct flume containing thirty-seven thousand (37,000) feet board measure, in accordance with specifications.

5. To do all necessary excavation for core wall and stripping foundation for embankment.

All work to be done under the supervision and direction of the Company's engineer and in accordance with the plans and specifications hereto annexed as Exhibit 'A', as the same are modified and changed by the specifications hereto attached as Exhibit 'B', and to furnish all material required in such construction and do all of said work for the consideration of Eighty-seven Thousand Dollars (\$87,000.00) to be paid and secured as hereinafter provided.

## II.

The Contractors agree to commence the actual construction of said dam within ten days from the date hereof and to fully complete all work to be performed hereunder by the Contractors by the 1st day of January, 1912, unless prevented by storms, cold weather or climatic or other conditions or forces beyond the control of the Contractors. It being distinctly understood and agreed that the Contractors shall not be liable in damages to the Company or any one else for failure to complete said dam in time to store water therein for irrigation or other purposes during the irrigation season of 1912, and the Contractors hereby only agree to use their best efforts and endeavors to complete said dam within the time stated.

## III.

It is mutually agreed that if the dam as described in said supplementary specifications, when completed to the height of forty-four (44) feet, should not

contain the yardage above specified or the amount of lumber above mentioned, or if it should require a greater yardage or more lumber, such increase or decrease shall be allowed for and additions or deductions to the total contract price above specified be made accordingly on the following basis, to-wit:

- (a) For earth work, 50c per cubic yard.
- (b) For concrete, \$12.50 per cubic yard.
- (c) For riprap, \$3.00 per cubic yard.
- (d) For broken stone under riprap, \$3.00 per cubic yard.
- (e) Lumber in flume, \$55.00 per thousand, board measure.

It is mutually agreed, however, that the total additions which may be made thereto, shall not exceed Thirteen Thousand Dollars (\$13,000.00), except at the option of the Contractors.

#### IV.

It is mutually agreed that all material used in such construction work and all work to be performed hereunder by the Contractors, shall meet the approval of Zenas N. Vaughn, engineer of the Company, or such other engineer as the Company may designate in writing to approve such work and material, and all such work shall be executed in a sound, workmanlike and substantial manner. The Company agrees that the said Zenas N. Vaughn, or an engineer representing the Company, shall be continuously at said dam during the construction thereof, and that such engineer or engineers shall have full power and authority to act for the Company in the premises, and

all work performed and material furnished by the Contractors in the construction of said dam shall be deemed to comply with the said specifications both as to workmanship and quality of material, and in every other respect, unless the Contractors or subcontractor or superintendent in charge of such work, are notified in writing of the insufficiency thereof and wherein it fails to comply with said specifications, within seventy-two (72) hours after such work is performed or material put in place. This, however, shall not release the Contractors from liability in the event such material or work should be washed out or otherwise be rendered clearly insufficient for the purposes and uses intended before the Contractors have performed all the work required to be performed by them for the general consideration of Eighty-seven Thousand Dollars (\$87,000.00), as hereinbefore stated, if due to failure to comply with said specifications. But such liability shall only extend to the rebuilding or replacing of such defective work or material.

#### V.

Upon the completion of the work required of the Contractors hereunder, if completed in accordance with the specifications hereto annexed and marked Exhibit 'A' as modified and changed by the supplementary specifications hereto attached and marked Exhibit 'B,' and by the terms of this agreement, which, in so far as it conflicts with any of said specifications, shall prevail, the engineer of the Company shall approve said work and material and issue

and deliver to the Contractors a certificate in appropriate form showing that this contract has been performed and completed by the Contractors. Should the engineer neglect to furnish such certificate within ten days after notified by the Contractors that the work has been completed, then the Contractors, or either of them, may name one engineer, and if such engineer and the Company's engineer can not agree as to whether said work has been satisfactorily completed, they shall select a third engineer and the decision of a majority of the three engineers so selected shall be final, binding and conclusive upon all parties to this agreement. Should the engineer of the Company and the engineer of the Contractors fail to agree upon a third engineer within five days, then such engineer may be designated by the Judge of the District Court of the Seventh Judicial District of the State of Idaho.

## VI.

Simultaneously with the execution of this agreement, the Company shall execute its promissory note for the sum of Eighty-seven Thousand Dollars (\$87,000.00), due November 15th, 1912, bearing interest at six per cent. (6%) per annum from November 15th, 1911, and shall cause said note to be endorsed in a manner satisfactory to the Contractors by E. D. Ford, A. G. Butterfield and R. C. McKinney of Weiser, Idaho, and shall execute a mortgage on all its property, rights and franchises of a form satisfactory to the Contractors as security for the payment of said note, and any and all other sums due or to

become due under this agreement, or otherwise, from the Company to the Contractors. And upon the extra yardage and work which may be done by the Contractors under this agreement, as hereinbefore provided, being ascertained and determined, the Company shall execute its promissory note therefor, substantially similar in form to the note first above mentioned, drawing interest and falling due at the same time as the said note for Eighty-seven Thousand Dollars (\$87,000.00), and the note covering such extras or additional yardage and work shall likewise be secured by the mortgage above referred to, and shall be delivered to the Contractors upon the completion of the work to be by them performed hereunder. It being understood and agreed that said extras and additional work shall not be required to be performed by the Contractors unless notice to do such work be given the Contractors in due season and before the principal contract has been substantially completed.

## VII.

It is mutually agreed that the note for Eighty-seven Thousand Dollars (\$87,000.00) hereinbefore mentioned, shall immediately be deposited with F. F. Johnson, Cashier of the Boise City National Bank of Boise, Idaho, as trustee or escrow holder, and shall by such trustee be delivered to the Contractors upon the certificate of engineer of the Company, or the certificate of a majority of the engineers as herein provided, that the work required of the Contractors hereunder has been completed in substantial compliance with the terms of this agreement.



## VIII.

The Company further agrees to deposit with said trustee all certificates of sale issued by the State of Idaho covering lands purchased by the Company or in behalf of the Company from the State of Idaho and described in the mortgage above referred to. Such certificates shall be assigned in blank or to said trustee and properly acknowledged by the present holder thereof, and such certificates shall be held by said trustee, together with other collateral security mentioned and referred to in the said mortgage upon the terms and for the purposes stated in said mortgage. The Company shall also deposit with said trustee a certificate of stock endorsed in blank or to said trustee, covering all the stock which the Company owns in the Weiser Heights Orchard Company, being not less than two hundred and sixty (260) shares; the same to be held by the trustee as aforesaid. But upon payment of the said note or notes and all other indebtedness from the Company to the Contractors and the reasonable charges, if any, of said trustee, all of said collateral, bonds, stock and certificates of sale then remaining in the hands and in possession of said trustee, shall be reassigned and redelivered to the Company and the mortgage hereinbefore mentioned shall be fully released and discharged of record by the Contractors.

*In Witness Whereof*, the Contractors have caused their firm name to be hereunto subscribed by a member of the firm, and the Company has caused its name to be hereunto subscribed by its President and

its corporate seal affixed, attested by its Secretary, in duplicate, the day and year first above written.

MANEY BROS. & CO.,

By .....

CRANE CREEK IRRIGATION LAND & POWER  
COMPANY,

By .....

President.

Attest: .....

Secretary.

*Now, Therefore, Be It Resolved*, that the President and the Secretary be, and they are hereby authorized and empowered to execute said contract on behalf of this corporation, in duplicate, and in the words and figures above set forth, under the seal of the said Crane Creek Irrigation Land and Power Company, and that this corporation hereby acknowledges said contract as a binding obligation upon it.

On motion of R. C. McKinney, seconded by A. G. Butterfield, the following resolution was unanimously adopted, to-wit:

*Whereas*, this corporation has not sufficient funds to pay for the work contemplated by the contract heretofore authorized to be entered into with Maney Brothers and Company, heretofore presented to this meeting; and,

*Whereas*, as part of the conditions of said contract this corporation has agreed to execute its promissory note for \$87,000.00 dated September 29, 1911, to said Maney Brothers & Company payable on November 15, 1912, with interest from the 15th day of

November, 1911, at the rate of six per cent. per annum; and,

*Whereas*, it is further agreed that the payment of said promissory note shall be secured by a mortgage upon all the property of this corporation; and

*Whereas*, the board of directors deem it necessary and expedient that said promissory note and mortgage be executed at once, said mortgage being in the words and figures following, to-wit:

(Copy of mortgage and note hereinbefore referred to and set out in Cross-Bill is here set out in minutes).

*And Whereas*, a full, true and correct copy of said promissory note appears on page 5 of said mortgage;

*Now Therefore, Be It Resolved*, That the President and Secretary be and they are hereby authorized and empowered to execute said promissory note, and the mortgage above set forth, in duplicate, and deliver the said promissory note to F. F. Johnson, Trustee, and the said mortgage to the said Maney Brothers & Company, as contemplated by said mortgage and the agreement aforesaid, and to affix the corporate seal to said promissory note and mortgage; and

*Be It Further Resolved*, That the President be and he is hereby authorized and empowered to do all things required to be done by said contract and mortgage and to deposit with the trustee all the necessary deeds, contracts, stock certificates and assignments required to be deposited with him by the provisions of either said contract or mortgage and to furnish

whatever data that he may deem necessary to be furnished said Maney Brothers & Company, or said Trustee, in the premises.

No further business appearing the meeting adjourned.

State of Idaho,

County of Washington,—ss.

I, E. P. Hall, the duly elected, qualified and acting Secretary of the Crane Creek Irrigation Land and Power Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho, do hereby certify that the foregoing consisting of 18 pages including this contains a full, true and correct copy of the minutes of a special meeting of the board of directors of said corporation held at the office of the Company at Weiser, Idaho, on the 29th day of September, 1911, at 8:30 o'clock P. M.

In witness whereof, I have hereunto set my hand and affixed the seal of said corporation the 7th day of October, 1911.

(Seal)

E. P. HALL,

Secretary Crane Creek Irrigation Land and Power Co.”

“Exhibits 1 and 2 of Maney Brothers & Company were executed pursuant to this contract.”

E. R. Coulter, a witness on behalf of the cross-defendants, being first duly sworn, testified as follows:

“I am the Secretary of the Sunnyside Irrigation District and have been Secretary of that District

since about April, 1913. I have the custody of all the records of the District. I have been attorney for the Sunnyside and Crane Creek Irrigation Districts since their inception; in fact, I organized the districts, and have been familiar with all their transactions from the very inception of them to the present time."

"The paper marked 'Defendants Sunnyside and Crane Creek Irrigation Districts' Exhibit B' is the original contract entered into on the date therein mentioned, between Crane Creek Irrigation Land and Power Company, and Sunnyside Irrigation District."

The exhibit referred to as "Sunnyside and Crane Creek Irrigation Districts' Exhibit B" is in words and figures following, except that the plans and specifications thereto attached have been omitted therefrom, and we ask that the Court make an order transmitting and requiring the original plans and specifications attached to said original contract "Exhibit B" to be forwarded with and as a part of the record on appeal in the above entitled action.

*This Agreement*, made and entered into in duplicate this 22d day of August, 1910, by and between the Crane Creek Irrigation Land and Power Company, a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal place of business at Weiser, Washington County, Idaho, (hereinafter called the "Company") the party of the first part, and the Sunnyside Irrigation District, a corporation

duly organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal place of business in said district in Washington County, State of Idaho, (hereinafter called the "District"), the party of the second part,

*Witnesseth:* That, whereas, the Company has acquired the right to store, impound, divert and distribute for irrigation, power and domestic purposes certain waters of Crane Creek, in Washington County, Idaho, and the tributaries thereof, and the flood waters flowing therein, under certain water rights and water appropriations hereinafter more particularly described, and,

*Whereas,* The Company is also the owner of a partially constructed irrigation system, consisting of a dam site, reservoir, dams, canals, and other structures being constructed for the purpose of storing, impounding, diverting and distributing, under the water rights and water appropriations above referred to, the said waters of Crane Creek and its tributaries, and is also the owner of certain water rights of way for said reservoir, dams, canals and other structures being constructed and about to be constructed and situate in the County of Washington, State of Idaho, and,

*Whereas,* the District is a corporation duly organized under the laws of the State of Idaho, and has full power and authority to acquire and hold, appropriate and maintain reservoirs, canals, dams, aqueducts, ditches, pipe lines, tunnels, flumes and other structures and irrigation works for storing, im-

pounding, diverting, carrying and distributing water for irrigation purposes to lands and holders of lands within the boundaries of said Sunnyside Irrigation District, in accordance with the statutes of Idaho, in such cases made and provided; and,

*Whereas*, for the consideration hereinafter stated, the Company hereby agrees to sell and agrees to convey, and the District hereby agrees to purchase and agrees to receive conveyance of that certain portion of said water rights, water appropriations, and rights of way more particularly hereinafter described, and that portion of such works and irrigation system as constructed, as the times and in the manner hereinafter particularly set forth; and the Company for said consideration, hereby agrees to convey to the District together with said portion of said water rights, water appropriations and rights of way, that certain portion of the reservoir, dams, canals, pipe lines, flumes, laterals and other works composing such irrigation system completed within the time and in the manner hereinafter particularly set forth;

*Now Therefore*, in consideration of the premises, and in consideration of the sum of Ten Dollars (\$10.00) by each of the parties hereto to the other in hand paid, and in consideration of the mutual covenants and agreements herein contained to be kept and performed by the parties hereto, respectively, and for the purpose of evidencing an understanding and agreement between the parties hereto, the said parties have agreed and hereby do agree as follows, to-wit:

## I.

That said reservoir, dams, pipe lines, flumes, canals, laterals and other structures forming part of said irrigation system, all situated in Washington County, Idaho, shall when completed substantially conform to the plans and specifications prepared by A. J. Wiley and Z. N. Vaughn, hereto attached and made a part of this contract, and such additional plans and specifications as may hereafter be approved by the parties in the manner hereinafter provided.

## II.

The property to be conveyed is:

(a) An undivided thirty-five and twenty-six one-hundredths per cent. (35.26%) interest of, in and to that certain permit No. 1720, issued by the State Engineer of the State of Idaho, under date of December 16, 1905, to one Edwin D. Ford, and recorded in Book 6 at page 1729 of the records in said State Engineer's office at Boise, Idaho, and heretofore conveyed to the Company, together with a like proportion of all the water thereby appropriated and all rights acquired under said permit; also thirty-five and twenty-six one-hundredths per cent. (32.26%) of the right of all flowage through the Northwest quarter of the Northeast quarter and the North half of the Northwest quarter of Section 19, Township 12 North of Range 2 West of the Boise Meridian, in Idaho; also thirty-five and twenty-six one-hundredths per cent. (35.26%) of the right of flowage through the Northeast quarter of Section 24 in Township 12, North of Range 3 West of the Boise Meridian, in



Idaho, heretofore conveyed to the Company by Edwin D. Ford, and Hortense A. Ford, under date of May 9, 1910.

(b) An undivided thirty-five and twenty-six hundredths per cent. (35.26%) interest of, in and to all and singular such rights of way for canals, flumes and laterals as may be used in common by said District, the Company and its other grantees, acquired by the Company by purchase or by filing maps thereof as required by the Regulations of the General Land Office of the United States, and the Acts of Congress in relation thereto, including an undivided thirty-five and twenty-six one-hundredths per cent (35.26%) interest of, in and to said reservoir site as described in that certain indenture, dated May 9, 1910, between Edwin D. and Hortense A. Ford and the Company, which said indenture is of record in Book . . . . of Deeds at Page . . . . of the Records in the office of the County Recorder of Washington County, Idaho.

(c) An undivided thirty-five and twenty-six one-hundredths per cent (35.26%) interest of, in and to all canals, pipe lines, flumes and aqueducts situate wholly without the boundaries of said irrigation district, as shown upon the plat attached hereto and used in connection with said district, or appurtenant thereto.

(d) All and singular the main canals, distributing laterals, pipe lines and flumes situate wholly within the boundaries of said irrigation district, as appear from the plat hereto attached, subject to the

conditions hereinafter mentioned, including all the rights of way for the same now owned or hereafter to be acquired by the Company.

### III.

Modifications in the plans and specifications above referred to may be made with the consent of the Engineer of the Company, and the Engineer of the District, and where they cannot agree, then by an engineer by them jointly selected, but which third engineer shall in nowise be connected with the Company, the District, or with any contractor or sub-contractor on the work; provided that no modifications of such plans or specifications shall be made other than such as may be found necessary because of the unforeseen character of the material to be excavated, or conditions to be overcome; and provided that no modifications of such plans or specifications shall be made except such as shall improve the system and works and especially that part of the same affected by such modifications, and provided further that any such modifications shall not invalidate any bond or bonds as hereinafter provided for.

### IV.

That the capacity of the reservoir now in process of construction by the Company shall when final conveyance is made hereunder be not less than fifty thousand (50,000) acre feet of water, and when finally completed said reservoir shall have a capacity of approximately seventy thousand six hundred and seventeen (70,617) acre feet of water.

## V.

The main canal, pipe lines and flumes carrying the water from such reservoir to the place of use by the District and each main lateral therefrom shall be of the size and have the fall prescribed in the plans and specifications hereto attached.

## VI.

The Company agrees to have all the works above described completed by the first day of May, 1912, and the dam to be completed within one year from the date of this contract, and to be of a sufficient capacity to impound all of the water contracted for by the Crane Creek and Sunnyside Irrigation Districts.

## VII.

That upon the execution of this agreement, the Company agrees to convey to the District, the receipt of which is hereby acknowledged, an undivided thirty-five and twenty-six one-hundredths per cent (35.26%) interest of, in and to said water right and reservoir site, excepting the right of possession thereof which is to be held until final conveyance, as herein provided; and upon the completion of any portion of said irrigation system, as shown by each monthly estimate in the construction thereof, the Company agrees to convey to the District such completed portion with the same proportion of the rights of way for such system; and upon the completion of the whole of such system within the time above specified, to convey the whole of the undivided interest of, in and to said water rights, appropriations, reservoir

sites, rights of way, canals, dams, pipe lines, flumes, laterals and other structures, with the appurtenances, contemplated in this agreement and agreed to be sold and conveyed hereunder, together with the possession thereof to the district; Provided, that within twenty (20) days after the signing of this agreement, and upon the delivery by the Company to the District of the bonds hereinafter provided for, the District will deliver to the Company its coupon bonds of the face value of One Hundred Thousand Dollars (\$100,000.00) and, upon the receipt of the conveyance above referred to, after each monthly estimate, will deliver its coupon bonds to the Company at face value to an amount equal to such part of the entire bond issue of said District, to be sold and delivered hereunder, as the constructed portion of said works of said Company bears to the entire works to be constructed for the use and benefit of said District.

### VIII.

The District in consideration of the covenants and agreements herein contained to be kept and performed by the Company, and in full payment for said water rights, irrigation system, reservoir, dams, canals, aqueducts, pipe lines, flumes and other structures forming a part of such irrigation system thus sold and to be sold and conveyed when completed as herein provided, hereby agrees to deliver to the Company in the manner hereinafter provided, the coupon bonds of the District, at their face value to the amount of Four Hundred and Fifteen Thousand Dollars (\$415,000.00).

## IX.

In arriving at the amount of the consideration to be paid to the Company by the District, as hereinbefore set forth, the basis is that for each acre of land receiving a full water right, the bonds of the District, in the sum of Fifty Dollars, (\$50.00) shall be paid by the District to the Company; and for each acre of such lands receiving a fractional part of a full water right, the District shall pay the Company the bonds of the District in the same fractional part of Fifty Dollars (\$50.00); the sum in each instance to be determined by the assessment it benefits against said lands, in the manner provided by law. No bonds are to be delivered by the District to the Company for those lands against which no benefits are assessed.

## X.

The District is fully aware that the Company shall have the right to sell and transfer the bonds so delivered and to be delivered to the Company by the District hereunder, to divers persons, and by reason thereof any failure on the part of the Company to comply with the terms of this agreement, or any of them, shall in no wise affect the validity of such bonds or any of them as binding obligations of the District.

## XI.

All conveyances provided for herein shall be by good and sufficient deed and in the usual form and shall be of such character as will meet the approval of counsel for the respective parties hereto, and all

property conveyed shall be free and clear of all incumbrances.

## XII.

It is understood and agreed that the acceptance by the District of the conveyance of the constructed portions of the work as completed by the Company, based on the monthly estimates, shall in no case be deemed a final acceptance of such property or any part thereof, or be deemed a waiver of any rights of the District to require a full conveyance of that portion of the entire system contemplated under this agreement, when the same shall be fully completed as herein provided, nor a waiver of any right to object to any imperfect work, or construction whether as to workmanship or materials used relative to any conveyed or other portion of such work until finally accepted as herein provided, nor a waiver of the right of the District to require before acceptance, that all faulty or imperfect work, or materials, or construction, be torn out and rebuilt in accordance with the plans and specifications therefor before final acceptance of the same.

## XIII.

The Company will furnish all material and build a suitable dam at the place designated in the plans, according to the plans and specifications therefor; together with all canals, main laterals and waste ways necessary to carry the water required for the lands situated in said irrigation district, and of sufficient capacity to, under normal conditions, and without endangering the strength of said canals and main later-

als, carry the water contemplated to be stored for the District under this contract, all of the same to be built and constructed in the manner approved by the Engineer of the Company and according to the plans and specifications therefor.

#### XIV.

The Company will build and construct, at its own proper cost and expense, a telephone line along the right of way of said canal to the dam site, to be conveyed to the District, but reserving unto the Company the perpetual right to use and occupy said poles for the purpose of carrying its own telephone wires; the cost of maintaining and renewing said telephone line after the completion and acceptance by the District, to be shared by the parties thereto in proportion to their respective interests; and it is hereby stipulated that the interest of the District in the same is to be a thirty-five and twenty-six one hundredths per cent (35.26%) interest.

#### XV.

The Company will furnish said District 24,900 acre feet of water to be stored in each season in said reservoir, delivered in the reservoir, and to be used as desired by the District during the irrigation season in each year, as part of the consideration of this contract; provided, however, that in the event there shall be a shortage of water in any season, caused by no fault or neglect on the part of the Company, and the water stored in said reservoir shall not equal the maximum amount stored therein under ordinary conditions in ordinary years, then and in that event,

the District shall pro rate with the other tenants in common of said reservoir, the actual amount of water stored therein for said season in proportion to the interest owned by the District in said reservoir, that is to say: thirty-five and twenty-six one hundredths per cent (35.26%) of the entire amount of water stored for said season, and it is expressly contracted that the Company shall not sell a greater amount of water, or interest in said system representing a greater amount of water in the aggregate, including the water and interest it has hereinbefore contracted to sell to the District, then the total amount of water, which, in ordinary years, under ordinary conditions, shall be stored in said reservoir.

If for any reason any portion of the acreage included within said District, and for which is included in this contract a water supply, should lie above the main canal as finally determined and constructed, or against which no benefits shall be assessed, a deduction shall be allowed in the above amount at the rate of fifty dollars (\$50.00) per acre for all acreage excluded, and the quantity of water to be furnished shall also be reduced at the rate of three (3) acre feet of water for each acre so excluded, and the interest in the reservoirs, rights of way and main canals situate outside of said irrigation district, shall also be reduced proportionately.

#### XVI.

It is covenanted and agreed that no bonds shall be issued, or water rights or maintenance charges taxed against any lands within said district which re-



ceive no benefits from the irrigation works and against which no benefits shall be assessed by the District.

#### XVII.

On all bonds delivered by the District to the Company, the Company agrees to reimburse the District for the interest paid thereon for the time from the date of the issuance of the bonds until the completion of said system by the Company, and the acceptance of the same by the District. The Company agrees to advance and pay for the District, the interest due on July 1st on said bonds, of the first irrigation season after the completion of said system. The District to repay said advancements to the Company on the first day of January, following the first irrigation season said water is used by the District.

#### XVIII.

It is further understood and agreed, as part of the consideration and purchase price of said irrigation works, that the exclusive right to the perpetual use of all water stored in said reservoir site by means of said proposed dam, or any dam, or otherwise, for power and other purposes at any point or points between the dam and the head-gate of the main canal, is hereby reserved to the Company, its successors and assigns forever, provided, however, that such use for power and other purposes shall not in any way interfere with the use of said water by the District whenever needed for irrigation purposes; and provided, further, that whenever the water is so used for such power or other purposes, the duty and cost of patrol-

ling the dam shall be borne entirely by the Company.

### XIX.

It is further covenanted and agreed that the use of water furnished to said District under this contract is to be, and the same is hereby limited to those certain specified tracts which are included within the boundaries of said District, as the same existed at the time of the bond issue and against which are assessed the benefits of said irrigation system.

### XX.

It is understood and agreed that the Company reserves and shall have the sole right to contract for and sell in the future any and all water which may be needed by any lands within (or without) said irrigation district, as the boundaries thereof now exist or as they may be hereafter extended, against which no benefits, or merely nominal benefits are assessed, and to have the use of any canals or laterals owned by the District to transport the same under the direction of the District to the persons to whom it may sell water; provided, it builds such canals of sufficient size to provide for future requirements in the first instance or that it enlarge said canals at its own proper cost and expense when needed, and pay the same rate or proportion of the maintenance charges as is paid by the other land owners, and provided, further, that in the event the Company shall desire to enlarge said canals as hereinbefore set forth, it shall do so at such times and in such manner as not to interfere with the use and enjoyment of the Dis-

trict of its water and vested rights; and the Company further reserves to itself the sole and exclusive right to enlarge the storage capacity of said reservoir, but only in accordance with the plans and specifications to be approved by the State Engineer of the State of Idaho, before such enlargement; and provided, further, that such enlargement shall be made in such manner as not to endanger the property and rights of the District; and provided, further, that in the event the Company shall enlarge said reservoir to a capacity in excess of 70,617 acre feet, then and in such event in case of shortage of water or in extraordinary or dry seasons, the District will not be required to prorate the water to be stored in said reservoir, as provided in Section XV of this contract, with the other tenants in common to the extent of more than 70,617 acre feet, that is to say that when nary season shall be less than 70,617 acre feet, the District shall prorate only with the other tenants in common owning the first 70,617 acre feet, including the District, but when the amount of water stored equals 70,617 acre feet or more the District shall be entitled to its full quota of water provided for under this contract.

## XXI.

It is further agreed that before any petition for the annexation to said District of adjacent lands, shall be granted, the directors of the District shall cause petitioners named in said petition to pay or provide satisfactory security for the payment, in addition to any other amount which is provided for,

the sum of Fifty Dollars (\$50.00) per acre, with interest, as a maximum, which shall be paid to the Company upon its furnishing the additional amount of water required to irrigate said land, at the rate of three (3) acre feet of water per acre, and in case said land already has a partial water right the Company may, at its option, accept such reduction from the above maximum as may in its judgment be just and proper, and only such reduction as may be satisfactory to the Company will be accepted by the Directors of said District, provided, that in the event of the taking in of lands under such conditions, the Company shall at its own proper cost and expense, enlarge the canals and laterals to a sufficient capacity to carry said water for said additional lands.

## XXII.

As certain lands included in the District are embraced in desert and homestead land entries, title to which is in the United States, and by reason whereof annual assessments for the payment of principal and interest on the bonds of such District cannot be enforced against such lands until title thereto passes to the entryman, the Company hereby agrees to advance and pay to the District, any and all delinquent payments of the holders of such desert or homestead lands, that would be applicable to the payment of the principal or the interest of the bonds of the District, or any of them, until the title to such land passes from the United States to those entitled to receive the same, and in consideration of which the District agrees to adopt and enforce such by-law or by-laws

as may be necessary to require the claimants to such lands to pay any and all of the said assessments against such lands annually in advance of the right to use or apply any water from such irrigation system to the irrigation of such lands, or any portion thereof, pending the passing of title thereto from the United States.

And the District hereby agrees to use its utmost endeavors by providing stringent by-laws, and otherwise, to collect all taxes assessed against said unpatented lands on account of the payment of the principal or interest of the bonds of the District, that may become delinquent, or be not paid by the entryman, and which shall under the provisions of this agreement be advanced by the Company, and when so collected the District will reimburse the Company for any sums advanced by it to the amount collected by the District.

### XXIII.

It is further agreed, that upon the completion of the irrigation system and before the final conveyance thereof as herein provided, to the District, the same shall be accepted by a resolution of the Board of Directors of the District, within thirty (30) days after written notice of such completion, showing that the same has been constructed in accordance with the plans and specifications herein referred to, and in the event of a disagreement in relation thereto, the engineer of the District and an engineer to be designated by the Company, shall select an engineer wholly

disconnected in every way with the Company or the District, or any contractor on said construction, and a decision of a majority of such three engineers as to whether or not such work has been constructed in accordance with the plans and specifications will, in the absence of fraud, be final, and in the event such works have not been so constructed as determined by such engineers, the Company shall proceed at once to complete the works in conformity with such plans and specifications.

#### XXIV.

It is contracted that there shall be no charges against the District by the Company, for extra cost of construction necessitated by any change of plans or any fault or omission contained in the plans and specifications for such system. All such extra expense, if any, to be borne by the Company.

#### XXV.

The Company shall remove and replace at its own expense, any work that shall have been improperly executed. All work contemplated in this agreement must be done subject to the approval of the engineer of the District, but should there be a disagreement between the engineer of the District and the engineer of the Company over any such work, the same shall be decided by an engineer to be by them jointly selected but which third engineer shall be in no wise connected with the Company, the District, or any contractor on the work, and his decision shall be final in the premises.

## XXVI.

It is contracted that the Company shall be responsible for all damages arising from accidents or neglect of the contractors or their workmen in the construction of said system and to hold the District harmless by reason of any such damages arising from the execution of this agreement.

## XXVII.

Upon the execution of this agreement the Company agrees to give the District good and substantial bonds in the sum of One Hundred Thousand Dollars (\$100,000.00), Fifty Thousand Dollars (\$50,000.00) of which bonds may be given by a Surety Company and Fifty Thousand Dollars (\$50,000.00) by individuals, and all to be approved by the District, conditioned for the faithful performance of the terms of the agreement by the Company to be kept and performed, and for the construction of the irrigation works covered by this agreement, in accordance with the plans and specifications herein mentioned, and their completion and conveyance within the time herein stated, and for the maintenance of said system for a period of five (5) years, pursuant to the conditions of this contract.

## XXVIII.

It is mutually covenanted and agreed by and between the parties hereto that in case the Company shall not increase the storage capacity of its dam and reservoir site to 70,617 acre feet of water, within five (5) years from the delivery and acceptance of the proportion of said irrigation system, etc., contem-

plated by this contract, then and in that event the Company, by good and proper conveyance will convey unto the District, an additional percentage of interest in and to the reservoir, reservoir site, water permit, flowage rights, canals, flumes, laterals, etc., mentioned and described in Paragraphs a, b and c of the section numbered II of this contract, equal to fourteen and forty-five one-hundredths per cent (14.45%) thereof, so that the District will own and have a forty-nine and seventy-one one-hundredths per cent (49.71%) interest of, in and to the said described works.

It being understood and agreed that the basis by which the percentage mentioned in this contract are obtained, is the maximum capacity of the reservoir in acre feet as compared with the amount of water hereby sold in acre feet, so that if the reservoir is increased to 70,617 acre feet capacity the percentage set forth in Paragraph II is correct and shall stand but shall be increased as herein provided in the event the capacity of the reservoir shall not be increased from 50,000 to 70,617 acre feet of water.

#### XXIX.

It is mutually agreed that the following maps, blue prints, plans and specifications hereinbefore referred to as "the plans and specifications" and endorsed on the face and margin thereof, "E. D. Ford, President, Crane Creek Irrigation Land and Power Company, and O. M. Harvey, President, and A. D. Redford, Secretary, Sunnyside Irrigation District, and C. C. Cleary, President, and Maude Kiser, Secretary,



Crane Creek Irrigation District," are hereby referred to and made a part of this contract, to-wit: The attached sheets and writings numbered 1 to 10 both inclusive.

XXX.

It is mutually understood and agreed that the provisions of this agreement shall be binding upon the parties hereto, their successors and assigns.

*In Witness Whereof*, the respective parties hereto have caused their corporate names to be hereunto subscribed by their respective presidents, sealed with their corporate seals and duly attested by their respective secretaries, the day and year first above written, pursuant to the authority of a resolution of their respective Boards of Directors.

CRANE CREEK IRRIGATION LAND  
AND POWER COMPANY,

By E. D. Ford, Its President.

Attest: E. P. Hall, Secretary.

Crane Creek Irrigation  
Land and Power Company,  
Idaho, incorporated 1909.

SEAL.

Witnessed by Ed. R. Counter.

SUNNYSIDE IRRIGATION DISTRICT,

By O. M. Harvey, Its President.

Attest: A. D. Redford, Secretary.

Sunnyside Irrigation  
District, Corporate

SEAL.

The paper marked "Sunnyside Exhibit T" is contract dated Jan. 3, 1911, between Crane Creek Irrigation Land and Power Company and Sunnyside Irrigation District, for extensions of time when the Crane Creek Irrigation Land and Power Company should put up the indemnity bond called for in Sunnyside and Crane Creek Irrigation Districts' Exhibit B.

The paper marked "Sunnyside Exhibit T" is in words and figures following, to-wit:

Weiser, Idaho, January 3, 1911.

*This Agreement*, Made and entered into by and between Sunnyside Irrigation District, hereinafter called the District, the party of the first part, and the Crane Creek Irrigation Land and Power Company, hereinafter called the Company, the party of the second part, Witnesseth:

*Whereas*, under the provisions of Section 7 of that contract heretofore made and entered into by and between the parties hereto on the 22nd day of August, 1910, for the purchase by the party of the first part from the party of the second part of sufficient interest in the dams, reservoir, water, water rights, irrigation system, ditches, and laterals, now constructed, being constructed and to be constructed by the party of the second part to irrigate all the irrigable lands situate within the irrigation district, of the party of the first part, which contract is spread on the records of the minutes of the meeting of the Board of Directors of the party of the first part, of date of August 22,

1910, it is provided that within twenty days from the signing of said agreement and contract, and upon the delivery by the company to the district of the bonds hereinafter provided for, the District will deliver to the Company its coupon bonds of the face value of One Hundred Thousand (\$100,000.00) Dollars, and

*Whereas*, under the provisions of Section 27 of said contract, it is provided that the Company shall deliver to the District its good and substantial bonds in the sum of One Hundred Thousand (\$100,000.00) Dollars, as in said Section 27 of said contract is specifically set forth; and,

*Whereas*, it is impossible for the party of the first part to deliver said bonds until the apportionment of benefits against the lands of said District has been made and approved by the Court, all of which has not yet been done.

It is now mutually agreed by and between the parties hereto, in consideration of the premises, that the time for the delivery of said bonds by each of the respective parties to the other shall be extended until the apportionment of said benefits against the lands in said District shall be made by the party of the first part and the same shall be approved and settled by proper and final decree of the Court.

It is further mutually agreed that this agreement shall in no case make void or in any manner change any of the terms or conditions of said agreement spread upon the records of the minutes of said meeting of the Board of Directors, of date of August 22,

1910, and that the same shall continue in full force and effect in all reports and in their entirety save and except as to the time of the delivery of said bonds as is hereinbefore set forth.

*In Witness Whereof*, the respective parties hereto have caused their corporate names to be hereunto subscribed by their respective presidents, sealed with their corporate seals, and duly attested by their respective secretaries, the day and year first above written, pursuant to the authority of the resolution of their respective Boards of Directors.

SUNNYSIDE IRRIGATION DISTRICT,

(Seal)

By O. M. Harvey, Its President.

Attest: A. D. Redford, Secretary.

CRANE CREEK IRRIGATION LAND  
& POWER COMPANY,

(Seal)

By E. D. Ford, Its President.

Attest: E. P. Hall, Secretary.

The paper marked "Sunnyside Exhibit M", is a contract dated October 3, 1911, for the extension of time for the completion by the Crane Creek Irrigation Land and Power Company of the irrigation system for Sunnyside and Crane Creek Irrigation District, which paper "Sunnyside Exhibit M", is in words and figures as follows, to-wit:

*This Agreement*, Made and entered into this the 3rd day of October, 1911, in duplicate, by and between the Sunnyside Irrigation District, a municipal corporation, within Washington County, State of Idaho, the party of the first part, and the Crane Creek Irrigation Land and Power Company, a cor-

poration, organized and existing under the laws of the State of Idaho, the party of the second part, Witnesseth:

*That, Whereas,* there is now existing between the parties hereto a contract in writing dated the 22nd day of August, 1910, for the erection, construction and completion of a certain dam, reservoir and irrigation works known as the Crane Creek Dam, Reservoir and Irrigation Works, and for the conveyance by the party of the second part to the party of the first part of certain portions or interest in said dam, reservoir and system; and,

*Whereas,* Article VI of said contract provides among other things that said dam shall be completed so as to store 50,000 acre feet of water in the reservoir by not later than the 22nd day of August, 1911, and that the entire proposed irrigation systems shall be completed by the 1st day of May, 1912; and,

*Whereas,* the party of the second part now desires to extend the time in which said dam and irrigation works shall be completed;

*Now, Therefore,* in consideration of the sum of one dollar to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and other considerations hereinafter set forth, it is agreed by and between the parties hereto as follows, to-wit:

That the party of the first part hereby extends the time for the completion of the dam mentioned in paragraph VI of said contract dated August 22nd, 1910, from the 22nd day of August, 1911, to the 1st

day of September, 1913, and hereby extends the time for the completion of the works mentioned in said contract, from the 1st day of May, 1912, as set forth in said paragraph VI of said contract aforesaid to and until the 1st day of September, 1913.

The party of the second part, in consideration of the extensions of time aforesaid hereby agrees that it will forthwith and as soon as possible, commence work upon the dam and complete a portion of the same, building to the height of forty-four feet, before the 31st day of December, 1911, the elements and weather permitting.

The party of the second part, for and in consideration of said extensions aforesaid, hereby contracts and agrees that in the event said reservoir, dam and irrigation system shall not be completed and ready for delivery to the party of the first part as called for by paragraph VI of said contract as amended by this contract, on or before the 15th day of May, 1913, the party of the second part agrees to reimburse the party of the first part for the interest on all bonds of the District delivered by the District to the Company, for the time from the date of issuance of said bonds until the 1st day of January, 1914, and also agrees to advance and pay for the District, the interest due July 1st on said bonds for the first irrigation season thereafter, the District to repay said advancements to the Company on the 1st day of January following; and that the provisions of paragraph XVII of said contract aforesaid shall remain in full force and effect except as herein changed.

That said contract of August 22nd, 1910, shall in all other particulars be and remain in full force and effect, and that the bonds called for by said contract, to be executed and delivered by the second party to the first party hereto, shall cover this contract as well as said contract of August 22nd, 1910.

*In Witness Whereof*, the party of the first part has caused these presents to be executed by the Chairman of its Board of Directors, attested by its Secretary and sealed with its corporate seal, being thereunto duly authorized by a resolution of its Board of Directors duly passed on this day; and the party of the second part has caused these presents to be executed by its president, sealed with its corporate seal and attested by its Secretary, being thereunto duly authorized by resolution of its Board of Directors duly passed, all on the day and year first above written.

SUNNYSIDE IRRIGATION DISTRICT,

(Seal) By O. M. Harvey, its President.

Witnessed by: John H. Norris, J. F. Clabby.

Attest: A. D. Redford, Secretary.

CRANE CREEK IRRIGATION LAND AND  
POWER COMPANY,

(Seal) By E. D. Ford, its President.

Attest: E. P. Hall, Secretary.

---

The paper marked "Sunnyside Exhibit O" is a contract between Crane Creek Irrigation Land and Power Company and Sunnyside Irrigation District

for the extension of time in which said Crane Creek Irrigation Land and Power Company should complete the irrigation system for said district, which paper so marked "Sunnyside Exhibit O" is in words and figures as follows, to-wit:

*This Agreement*, Made and entered into this the 19th day of April, 1913, by and between Sunnyside Irrigation District, a municipal corporation of Washington County, Idaho, party of the first part, and Crane Creek Irrigation Land and Power Company, a corporation organized and existing under the laws of the State of Idaho, the party of the second part, Witnesseth:

*Whereas*, There is now existing between the parties hereto a certain contract dated August 22, 1910, for the erection, construction and completion of a certain dam, reservoir and irrigation works known as the Crane Creek reservoir and irrigation works, and for the conveyance by the party of the second part to the party of the first part of the certain portions or interest in said dam, reservoir and system, and,

*Whereas*, Article Six of said contract provides, among other things, that said dam shall be completed so as to empound 50,000 acre feet of water in the reservoir by not later than the 22nd day of August, 1911, and that the entire proposed irrigation system shall be completed not later than the 1st day of May, 1912, and

*Whereas*, By a supplemental agreement made and entered into on the third day of October, 1911, the



party of the first part extended the time for the completion of the dam mentioned in said paragraph Six of said contract dated August 22, 1910, from the 22nd day of August, 1911, to the 1st day of September, 1913, and extended the time for the completion of the works mentioned in said contract from the first day of May, 1912, as set forth in said paragraph Six of said contract, to the first day of September, 1913, and

*Whereas*, at this time, the party of the second part is desirous of further extension of time for the completion of said dam and irrigation works, and

*Whereas*, The dam and reservoir called for by said contract of August 22nd, 1910, has already been partially completed by the party of the second part, and to the extent that the same will now and does empond the sum of 35,000 acre feet of water,

*Now, Therefore*, In consideration of the sum of One Dollar (\$1.00) to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and of other considerations hereinafter set forth, it is agreed by and between the parties hereto as follows, to-wit:

That the party of the first part hereby extends the time for the completion of the dam mentioned in in paragraph Six of said contract dated August 22, 1910, from September 1, 1913, to April 15, 1914, and hereby extends the time for the completion of the works mentioned in said paragraph of said contract of August 22, 1910, from the first day of Sep-

tember, 1913, to and until the fifteenth day of April, 1914.

Party of the second part, in consideration of the extension of time aforesaid, hereby agrees that it will forthwith and at once commence work upon the dam and complete the same to the requirements of said Paragraph Six of said contract of August 22, 1910, on or before the 15th day of April, 1914.

And the party of the second part, for and in consideration of said extension of time as aforesaid, does further contract and agree that in the event said reservoir, dams and irrigation system shall not be completed and ready to deliver to the party of the first part as called for in Paragraph Six of said contract, as amended by said contract of October 3, 1911, and this contract, on or before the 15th day of April, 1914, party of the second part will reimburse party of the first part for the interest on all bonds of the District delivered by the District to the Company for the time from the date of the issuance of said bonds until the first day of January, 1915, and also agrees to advance and pay to the district, the interest due on July first on said bonds for the first irrigation season thereafter, said District to repay said advancement to the Company on the first day of January following.

Paragraph XVII of the construction agreement dated August 22, 1910, as modified is hereby further modified in the following extent: The district will not require the company to pay any interest on any

bonds delivered to it, after January 1, 1914, provided the irrigation system is completed and ready to deliver to the District on or before April 15, 1914, except as provided for in this agreement.

That said contract of August 22, 1910, shall in all other particulars be and remain in full force and effect and that the bonds called for by said contract shall be executed and delivered by the party of the second part to party of the first part hereto to cover this contract as well as said contract dated the 22nd day of August, 1910.

*In Witness Whereof*, The party of the first part hereto has caused this contract to be executed by the Chairman of its Board of Commissioners, attested by its Secretary and sealed with its corporate seal, being thereunto duly authorized by a resolution of its Board of Directors duly passed on this day, and the party of the second part has caused these presents to be executed by its President, sealed with its corporate seal and attested by its Secretary, being thereunto duly authorized by a resolution of its Board of Directors, duly passed this day, all on the day and year first above written.

SUNNYSIDE IRRIGATION DISTRICT,

(Seal) By O. M. Harvey, its President.

Attest: Ed R. Coulter, Secretary.

CRANE CREEK IRRIGATION LAND AND  
POWER COMPANY,

(Seal) By E. D. Ford, its President.

Attest: E. P. Hall, Secretary.

The paper marked "Sunnyside Exhibit S" is a joint contract between Crane Creek Irrigation Land and Power Company and Sunnyside and Crane Creek Irrigation District, dated April 19, 1913, relative to the indemnity bond. Said contract marked "Sunnyside Exhibit S" is in words and figures as follows, to-wit:

*This Contract*, Made and entered into in triplicate this the 19th day of April, 1913, by and between Crane Creek Irrigation Land and Power Company, hereinafter called the Company, party of the first part, and Crane Creek Irrigation District, the party of the second part, and Sunnyside Irrigation District, the party of the third part, witnesseth:

*Whereas*, On August 22, 1910, the Company of the party of the second part entered into a written contract for the sale and construction by the Company and delivery to the party of the second part of an irrigation system as in said contract specifically set forth, which contract is hereby referred to and made a part hereof;

*And Whereas*, By a contract of the same date, the Company as party of the first part entered into a similar contract with Sunnyside Irrigation District, as second party thereto, for the **construction of an** irrigation system for said Sunnyside Irrigation District, which contract was in writing and is hereby referred to and made a part hereof;

*And Whereas*, The reservoir, water rights, main canals, etc., of the system to be built and furnished to Sunnyside Irrigation District and to Crane

Creek Irrigation District are identical, each irrigation district getting an interest in and to said common water right, reservoir, main canal, etc.,

*And Whereas,* The interest of the two irrigation districts are identical in all respects save and except for the construction and completion of the distribution system for the distribution of water inside of each irrigation district wherein so far as said distribution system is concerned, neither district has any interest in the distribution system of the other,

*And Whereas,* Paragraph XXVII of each of said contracts between the Company and Sunnyside Irrigation District and Crane Creek Irrigation District, is identical, save and except that the amount of bond to be delivered in the contract with the Crane Creek Irrigation District is to be the sum of \$75,000, \$30,000 of which it is therein provided shall be by a surety company, and \$40,000 by individuals, to be approved by the district; and in the contract with the Sunnyside Irrigation District, the amount of such bond is \$100,000, \$50,000 of which shall be of a surety company, and \$50,000 by individuals;

*And Whereas,* Bonding companies will not write such a bond as that, when a part of the surety is to be furnished by a bonding company and a part by individuals, covering the same work,

*Now, Therefore,* It is mutually agreed by and between the parties hereto that the Company in lieu of the said bonds called for by said paragraph XXVII of said contracts made with Sunnyside Irri-

gation District and Crane Creek Irrigation District, shall execute good and sufficient bond in the sum of \$100,000, which bond shall be given by a surety company doing business in the State of Idaho, to the Crane Creek Irrigation District and the Sunnyside Irrigation District, jointly, conditioned for the faithful performance of all the terms and conditions of each of said contracts dated August 22, 1910, between said company and said Crane Creek Irrigation District and Sunnyside Irrigation District, which contracts are herein referred to and made a part hereof, in said contracts provided to be kept and performed by the said company for the construction of the irrigation works covered by said agreements and contracts, in accordance with the plans and specifications in said contracts mentioned and the completion and conveyance within the time therein stated, as supplemented by contract of this date as to time, and for the maintenance of said system for the period of five (5) years pursuant to the conditions of said contract dated August 22, 1910.

It being mutually agreed by and between the parties hereto that said joint surety bond shall take the place of and be in lieu of said bonds called for by said paragraph XXVII of said two contracts aforesaid, and it is further mutually agreed that both the Sunnyside Irrigation District and the Crane Creek Irrigation District shall have the right of action against said bonding company for the failure on the part of the Company to perform all or any of the terms and conditions in said contracts set forth

to be performed by said Crane Creek Irrigation Land and Power Company, and that said bonds shall so provide.

It being further mutually understood and agreed that said bond shall be in such form as shall meet with the intendments of this supplemental agreement, and shall be in such form also as to meet with the approval of the Board of Directors and Ed R. Coulter, the attorney for both the Crane Creek Irrigation District and the Sunnyside Irrigation District, and shall be by him approved.

It is further mutually understood and agreed that this supplemental agreement shall not affect any of the terms and conditions of said two contracts dated August 22, 1910, save and except said paragraph XXVII of each of said contracts, and all the terms and conditions of said contract of August 22, 1910, with the exception of said paragraph XXVII as herein amended shall be and continue in full force and effect, the intendments of this contract only to vary the terms, amount and conditions of the said bond.

It is intended that this contract shall be mutually binding upon and by and between each and every and all of the parties hereto.

*In Witness Whereof* The respective parties hereto have caused their corporate names to be hereunto subscribed by their respective Presidents, sealed with their corporate seals and duly attested by their respective secretaries, this the day and year first

above written, pursuant to authority duly granted by resolution of their respective Boards of Directors.

CRANE CREEK IRRIGATION LAND AND  
POWER COMPANY,

(Seal) By E. D. Ford, its President.

Attest: E. P. Hall, Secretary.

CRANE CREEK IRRIGATION DISTRICT,

(Seal) By Chas. C. Cleary, its President.

Attest: Daisy Dasch, Secretary.

SUNNYSIDE IRRIGATION DISTRICT,

(Seal) By O. M. Harvey, its President.

Attest: Ed R. Coulter, Secretary.

---

The paper marked "Sunnyside Exhibit R" is contract of October 16, 1913, between Sunnyside and Crane Creek Irrigation Districts and Crane Creek Irrigation Land and Power Company, relative to escrowing the bonds of said districts. Said contract, Exhibit R, is in words and figures as follows, to-wit:

*This Contract*, Made and entered into in triplicate this the 16th day of October, 1913, by and between the Crane Creek Irrigation Land and Power Company, a corporation, party of the first part, and Sunnyside Irrigation District, a municipal corporation, party of the second part, and Crane Creek Irrigation District, a municipal corporation, party of the third part,

*Witnesseth*, That, whereas, on August 22, 1910, party of the first part and party of the second part entered into a contract in duplicate under the terms



of which party of the first part sold and agreed to construct for the party of the second part an irrigation system to irrigate the lands of the party of the second part, and the party of the second part was to pay to the party of the first part for said irrigation system in the coupon bonds of the party of the second part at their face value in an amount equal to fifty dollars (\$50.00) per acre for all of the lands situated in the party of the second part, which should be irrigated and assessed for the benefits under the bonds issued and voted by party of the second part, as in said contract specifically set forth, which contract, being the contract of August 22, 1910, is hereby referred to and made a part hereof.

*And Whereas*, On August 22, 1910, party of the first part and party of the third part entered into a similar contract as that just last mentioned and described as being entered into between party of the first part and party of the second part, which contract of August 22, 1910, so entered into between party of the first part and party of the third part, is hereby referred to and made a part hereof,

*And Whereas*, Under each of said contracts so entered into by and between the parties of the first and second parts on the one hand and parties of the first and third parts on the other hand, and in paragraph VII of each of said contracts, it is specifically specified that said parties of the second and third parts should pay for said works on the monthly estimates of the work done on said irrigation system by party of the first part and upon the conveyance by party

of the first part herein to parties of the second and third parts of the same, as shown by said monthly estimate, by delivering to parties of the first part, coupon bonds of the parties of the second and third parts in face value to an amount equal to such part of the entire bond issue of the party of the second part and party of the third part to be sold and delivered to party of the first part under said contract as the constructed portion of said works so completed and conveyed as aforesaid would bear to the entire work to be constructed for the use and benefit of said party of the second part and party of the third part.

*And Whereas,* The total amount of bonds, face value, to be delivered to the party of the first part by party of the second part under said contract, as is shown by the assessments of benefits against the lands situate in said Irrigation District, is the sum of Five Hundred Fifty-five Thousand, Three Hundred and Eighteen (\$555,318.00) Dollars,

*And Whereas,* The total amount of bonds, face value to be delivered to the party of the first part by party of the third part under said contract, as is shown by the assessments of benefits against the lands situate in said Irrigation District, is the sum of Two Hundred and Fifty-six Thousand (\$256,000.00) Dollars,

*And Whereas,* a part of said irrigation system for said party of the second part and party of the third part have been completed and deeds therefor under said contract aforesaid, delivered to the party of the second part and party of the third part, the bonds

of said party of the second part and party of the third part in payment thereof have been delivered over to party of the first part, and the amount of bonds yet to be delivered by party of the second part to party of the first part, upon final completion of said works, is Three Hundred and Six Thousand, Six Hundred and Eighteen (\$306,618.00) Dollars, at the face and par value thereof, and the amount of bonds yet to be delivered by the party of the third part to party of the first part, upon final completion of said work, is One Hundred and Twenty-nine Thousand (\$129,000.00) Dollars, at the face and par value thereof,

*And Whereas*, On the 28th day of May, 1913, under said two contracts between party of the first part and party of the second part, on the one hand, and party of the first part and party of the third part hereto on the other hand, as novated, a joint indemnity bond of the Aetna Accident and Liability Company for One Hundred Thousand Dollars, guaranteeing the construction of said irrigation system, according to the terms and conditions in said bond set forth, which bond is hereby referred to and made a part hereof, was presented to the party of the second part and party of the third part by party of the first part, and by party of the second part and party of the third part approved and accepted,

*And Whereas*, Party of the first part has an opportunity to and is desirous of selling and disposing of, in one lot and at one time, all of the coupon bonds of party of the second part and party of the third part to which it will be entitled, and which said

party of the second part and party of the third part hereafter, under said contract of August 22, 1910, as novated, will have to pay and deliver to the said party of the first part,

*Now, Therefore,* In consideration of the premises and for the mutual advantage which may accrue to the parties hereto therefrom, it is hereby mutually contracted and agreed by and between the party of the first part and party of the second part on the one hand and party of the first part and party of the third part on the other hand, that the party of the second part and party of the third part shall properly sign, authenticate, register and deliver to the First National Bank of Weiser, Idaho, all of the coupon bonds of said party of the second part and party of the third part, which, under said contracts of August 22, 1910, as novated, the party of the second part and party of the third part will yet have to pay to party of the first part for said irrigation system, when completed, for the purpose of allowing said party of the first part to effect its said sale of said bonds in lump sum, and said First National Bank of Weiser is authorized and directed to deliver said coupon bonds to the party or parties to whom party of the first part has or may contract to sell the same, upon the receipt of the proceeds of the sale of said bonds which party of the first part in its said contract of sale thereof is to receive for the same from the parties to whom it is or may be selling the same, provided, of course, and upon the express condition that said proceeds of sale shall be equal to at least

sixty per cent of the face and par value of said bonds,

It being stipulated and agreed that upon receiving said moneys derived from the sale of said bonds as aforesaid, the First National Bank of Weiser shall hold the same in the name of and as the moneys of the party of the second part and the party of the third part hereto, respectively, and as trustee for them, and the same is to be paid out by said First National Bank of Weiser, Idaho, to said party of the first part, only in the amounts and at the times as authorized by the Board of Directors of the party of the second part to be at the times and in the amounts as set forth in paragraph VII of each of said contracts of August 22, 1910, by and between the party of the first part and party of the second part on the one hand and the party of the first part and party of the third part on the other hand; said payments of money so to be made by said bank to said party of the first part as authorized by the Boards of Directors of party of the second part and party of the third part as aforesaid, to be under said Section VII of said contract of August 22, 1910, and in lieu of the delivery of bonds as in said paragraph VII specified.

It is further stipulated and agreed by and between all parties hereto that this contract shall not affect any of the other terms and conditions of said contract of August 22, 1910, as heretofore set forth, and that said contract of August 22, 1910, as here-

tofore amended, shall in all other respects be in full force and effect and binding upon the parties hereto.

It is further specifically contracted and agreed that this contract of novation shall not become effective and binding upon the parties hereto until the Aetna Accident and Liability Company, a corporation, of Hartford, Connecticut, shall have delivered to the party of the second part and party of the third part, its agreement in writing, properly authorized and executed, consenting to this novation of said contract, and stipulating that this novation shall not in any respect nullify or novate the said indemnity bond for one hundred thousand dollars, dated May 28, 1913, heretofore executed and delivered by the party of the first part to the party of the second part and the party of the third part hereto.

It is further expressly provided that this contract shall not be binding upon the parties hereto or be operative or have any force or effect until the First National Bank of Weiser, Idaho, shall have executed and delivered to the party of the second part and party of the third part an indemnity bond, in form hereto attached, with sureties to be approved by the party of the second part and the party of the third part, accepting the trust obligation in this contract placed upon said First National Bank of Weiser, Idaho, and guaranteeing the faithful performance thereof, said bond to be in the sum of Two Hundred Thousand Dollars.

*In Witness Whereof*, The President and Secretary of the respective parties hereto have hereunto set

their hands and seals this the day and year first above written, having been thereunto duly authorized by the respective Boards of Directors.

CRANE CREEK IRRIGATION LAND AND  
POWER COMPANY,

(Seal) By E. D. Ford, President.

Attest: Nellie Saylor, Secretary.

SUNNYSIDE IRRIGATION DISTRICT,

(Seal) By O. M. Harvey, President.

Attest: Ed R. Coulter, Secretary.

CRANE CREEK IRRIGATION DISTRICT,

(Seal) By C. C. Cleary, President.

Attest: Daisy Dasch, Secretary.

---

The paper marked "Sunnyside Exhibit Q" is a contract dated November 21, 1913, between Sunnyside Irrigation District and Crane Creek Irrigation District on the one hand and Crane Creek Irrigation Land and Power Company on the other hand, for a change of depository. Said Exhibit Q is in words and figures as follows, to-wit:

*This Contract*, Made and entered into in triplicate this the 21st day of November, 1913, by and between the Crane Creek Irrigation Land and Power Company, a corporation, party of the first part, and Sunnyside Irrigation District, a municipal corporation, party of the second part, and Crane Creek Irrigation District, a municipal corporation, the party of the third part,

*Witnesseth*, That, Whereas, on August 22, 1910, party of the first part and party of the second part

entered into a contract in duplicate under the terms of which party of the first part sold and agreed to construct for the party of the second part an irrigation system to irrigate the lands of the party of the second part, and the party of the second part was to pay to the party of the first part, for said irrigation system, in coupon bonds of the party of the second part, at their face value, in an amount equal to Fifty Dollars (\$50.00) per acre for all of the lands situated in party of the second part, which should be irrigated and assessed for the benefits under the bonds issued and voted by party of the second part, as is in said contract specifically set forth, which contract, being the contract of August 22, 1910, is hereby referred to and made a part hereof.

*And Whereas*, On August 22, 1910, party of the first part and party of the third part entered into a similar contract as that just last mentioned and described as being entered into between party of the first part and party of the second part, which contract of August 22, 1910, so entered into between party of the first part and party of the third part is hereby referred to and made a part hereof,

*And Whereas*, Under each of said contracts so entered into by and between the parties of the first and second parts on the one hand and parties of the first and third parts on the other hand, and in paragraph VII of each of said contracts, it is specifically specified that said parties of the second and third parts should pay for said works on the monthly estimates of the work done on said irrigation system by



party of the first part and upon the conveyance by party of the first part herein to parties of the second and third parts of the completed portion of same as shown by said monthly estimate, by delivering to party of the first part, coupon bonds of the parties of the second and third parts in face value to the amount equal to such part of the entire bond issue of the party of the second part and party of the third part to be sold and delivered to the party of the first part under said contract as the constructed portion of said works so completed and conveyed as aforesaid would bear to the entire work to be constructed for the use and benefit of the said party of the second part and party of the third part.

*And, Whereas,* The total amount of bonds, face value, to be delivered to the party of the first part by party of the second part under said contract, as is shown by the assessments of benefits against the lands situated in said Irrigation District, is the sum of Five Hundred Fifty-six Thousand Three Hundred and Eighty-one Dollars (\$356,381.00).

*And, Whereas,* the total amount of bonds, face value, to be delivered to the party of the first part by party of the third part under said contract, as is shown by the assessments of benefits against the lands situated in said Irrigation District, is the sum of Two Hundred Fifty-six Thousand Dollars.

*And, Whereas,* a part of said irrigation system for said party of the second part and party of the third part has been completed and deeds therefor under said contract aforesaid delivered to the party of the

second part and party of the third part, the bonds of said party of the second part and party of the third part in payment therefor have been delivered over to the party of the first part and the amount of bonds yet to be delivered by party of the second part to party of the first part, upon the final completion of said works, is Three Hundred Seven Thousand, Six Hundred and Eighty-one Dollars (\$307,681.00), at the face value and par value thereof, and the amount of bonds yet to be delivered by party of the third part to party of the first part, upon the final completion of said work, is One Hundred Twenty-nine Thousand Dollars (\$129,000.00), at the face and par value thereof.

*And, Whereas,* On the 28th day of May, 1913, under said two contracts between party of the first part and party of the second part on the one hand and party of the first part and party of the third part hereto on the other hand, as novated, a joint indemnity bond of the Aetna Accident and Liability Company for one hundred thousand dollars, guaranteeing the construction of said irrigation system, according to the terms and conditions in said bond set forth, which bond is hereby referred to and made a part hereof, was presented to the party of the second part, and party of the third part by party of the first part, and by party of the second part and party of the third part approved and accepted,

*And, Whereas,* party of the first part has an opportunity to and is desirous of selling and disposing of, in one lot and at one time, all of the coupon bonds

of party of the second part and party of the third part to which it will be entitled, and which said party of the second part and party of the third part hereafter, under said contract of August 22, 1910, as novated, will have to pay and deliver to said party of the first part,

*Now, Therefore,* In consideration of the premises and for the mutual advantage which may accrue to the parties hereto therefrom, it is hereby mutually contracted and agreed by and between the party of the first part and party of the second part on the one hand and party of the first part and party of the third part on the other hand, that the party of the second part and party of the third part shall properly sign, authenticate, register and deliver to the Commerce Trust Company of Kansas City, Missouri, all of the coupon bonds of the said party of the second part and party of the third part, which, under said contract of August 22, 1910, as novated, the party of the second part and party of the third part will yet have to pay party of the first part for the said irrigation system when completed, for the purpose of allowing said party of the first part to effect its said sale of said bonds in a lump sum, and said Commerce Trust Company of Kansas City, Missouri, is authorized and directed to deliver said coupon bonds to the party or parties to whom party of the first part has or may contract to sell the same, upon the receipt of the proceeds of the sale of said bonds which party of the first part in its said contract of sale thereof, is to receive for the same from the

parties to whom it is or may be selling the same, provided, of course, and upon the express condition that said proceeds of sale shall be equal to at least sixty (60%) per centum of the face and par value of said bonds.

It being stipulated and agreed that upon receiving said moneys derived from the sale of said bonds as aforesaid, the Commerce Trust Company of Kansas City, Missouri, shall hold the same in the name of and as the moneys of the party of the second part and the party of the third part hereto, respectively, and as trustees for them, and the same is to be paid out by said Commerce Trust Company of Kansas City, Missouri, to said party of the first part, only in the amounts and at the times as authorized by the Board of Directors of the party of the second part and party of the third part, respectively; said payments to be at the times and in the amounts as set forth in paragraph VIII of each of said contracts of August 22, 1910, by and between the partf of the first part and party of the second part on the one hand and the party of the first part and party of the third part on the other hand; said payments of money so to be made by said Commerce Trust Company of Kansas City, Missouri, to said party of the first part as authorized by the Boards of Directors of party of the second part and party of the third part as aforesaid, to be under said Section VII of said contract of August 22, 1910, and in lieu of the delivery of bonds as in said paragraph VII specified.

It is further stipulated and agreed by and between all parties hereto that this contract shall not effect any of the other terms and conditions of said contract of August 22, 1910, as hereinbefore set forth, and that said contract of August 22, 1910, as heretofore amended, shall in all other respects be in full force and effect and binding upon the parties hereto.

It is further specifically contracted and agreed that this contract of novation shall not become effective and binding upon the parties hereto until the Aetna Accident and Liability Company, a corporation, of Hartford, Connecticut, shall have delivered to the party of the second part and party of the third part its agreement in writing, properly authorized and executed, consenting to this novation of said contract, and stipulating that this novation shall not in any respect nullify or novate the said indemnity bond of one hundred thousand dollars, dated May 28, 1913, heretofore executed and delivered by the party of the first part to the party of the second part and the party of the third part hereto.

It is mutually agreed that this contract shall be in lieu of that certain contract between the same parties, dated October 16, 1913, in which the First National Bank of Weiser is named as such Trustee; and that said contract of October 16, 1914, shall no longer be operative.

*In Witness Whereof*, the President and Secretary of the respective parties have hereunto set their hands and seals this the day and year first above

written, having been thereunto duly authorized by the respective Boards of Directors.

CRANE CREEK IRRIGATION LAND AND  
POWER COMPANY,

(Seal) By E. D. Ford, President.

Attest: Nellie Saylor, Secretary.

SUNNYSIDE IRRIGATION DISTRICT,

(Seal) By O. M. Harvey, President.

Attest: Ed R. Coulter, Secretary.

CRANE CREEK IRRIGATION DISTRICT,

(Seal) By Chas. C. Cleary, President.

Attest: Daisy Dasch, Secretary.

---

Contracts between Crane Creek Irrigation Land and Power Company and Crane Creek Irrigation District are identical in terms and conditions with the contracts between Crane Creek Irrigation Land and Power Company and Sunnyside Irrigation District, and the plans and specifications are all identical. The only difference between the two contracts is one of percentages, due to the acreages of land in the two districts.

The original contracts, "Exhibit B" and similar contract with Crane Creek Irrigation District, contemplate interest in the system and reservoir in the proportion to the amount of acreage of land in the two districts. Since the execution of said two contracts of August 22, additional acreage has been added to each of said districts and the percentages called for in that contract are not the correct percentages.

On cross-examination the witness testified:

“That is my signature at the close of paper marked ‘Maney Bros. Exhibit No. 4.’ This is a certified copy of a resolution passed by the Board of Directors of the Sunnyside Irrigation District. The Crane Creek Irrigation District passed a similar resolution. I have been attorney for both districts during all of this time and the Secretary of the Crane Creek District is a stenographer in my office. I am perfectly familiar with the records of both districts. A similar resolution to that was passed by the Crane Creek Irrigation District, and a certified copy of it was given under the signature and seal of the Secretary of that district, to Mr. Ford, I think, for transmission to Maney Bros.”

The exhibit referred to as “Maney Bros. Exhibit No. 4” is in words and figures following, to-wit:

“Office of the Board of Directors of Sunnyside Irrigation District, July 10, 1914.

The Board of Directors of Sunnyside Irrigation District met at the hour of eight o'clock p. m., this date, pursuant to an order of adjournment duly entered on July 7, 1914, there being present O. M. Harvey, President, August Brockman and William G. Perlau, Directors, and also all the officers and directors of the Crane Creek Irrigation District, the following proceedings were had, to-wit:

\* \* \* \* \*

Thereupon the following resolution was offered by Director Brockman, and upon motion

duly made, seconded and carried, was unanimously adopted:

*Be It Resolved* by the Board of Directors of Sunnyside Irrigation District and Crane Creek Irrigation District, in joint meeting assembled, that it is a fact that the mortgage from Crane Creek Irrigation Land and Power Company to Maney Brothers and Company, dated the 29th day of September, 1911, and recorded on the . . . . . day of October, 1911, in Mortgage Book . . . . . at pages . . . . . in the office of the County Recorder of Washington County, Idaho, was duly executed and delivered by said Crane Creek Irrigation Land and Power Company to said Maney Brothers Company, after the date of the contract of August 22, 1910, between said Districts and the Crane Creek Irrigation Land and Power Company, under which the Crane Creek Irrigation Land and Power Company contracted to sell and convey unto said Districts a complete water system for the irrigation of the lands in said Districts, to be paid for by the District by the coupon bonds of said Districts at the rate of fifty dollars per acre in bonds for each acre of land in the Districts receiving a water right, but was executed and delivered to said Maney Brothers and Company before the date on which the Crane Creek Irrigation Land and Power Company made its first conveyance to the said Districts of any interests in the water rights and reservoir site covered by said mortgage.



*Be It Further Resolved*, That we understand that, under the correct construction of the law, the conveyances of lands and water rights covered by said mortgage, which have been made by the Crane Creek Irrigation Land and Power Company to said Districts, have been made, subject to the said mortgage lien of Maney Brothers and Company, and that said mortgage lien of Maney Brothers and Company is, so far as said Districts are concerned, a first lien upon said lands;

*But, Be It Further Resolved*, That, in passing this resolution, the said Districts do not waive any rights which they may have in the premises; and in the event that our interpretation of the law of the case is incorrect, it shall not be the intention of said Districts to waive or relinquish any rights which they may or might have in the premises.

\* \* \* \* \*

There being no further business to come before the Board of Directors at this time, on motion same adjourns, to meet the.....day of July, 1914.

O. M. Harvey, President.

Attest: Ed R. Coulter, Secretary.

State of Idaho,

County of Washington,—ss.

Ed R. Coulter hereby certifies that he is the Secretary of Sunnyside Irrigation District and as such has on file in his office the records and

files of said District. That the within pages, numbered 1 and 2, contain a true and correct copy of the resolution passed by the Boards of Directors of Sunnyside and Crane Creek Irrigation Districts, at a joint meeting held at the hour of eight o'clock p. m., on July 10, 1914.

*In Witness Whereof*, I have hereunto set my hand and affixed the official seal of said Irrigation District, this the 10th day of July, 1914.

(Seal)

ED R. COULTER."

"I prepared paper marked 'Maney Bros. Exhibit No. 5,' as attorney for the irrigation districts. The signatures attached are the genuine signatures of the Presidents of those two districts."

The exhibit referred to as "Maney Bros. Ex. No. 5" is in words and figures following, to-wit:

*"This Is to Certify*, That, on August 22, 1910, the Crane Creek and Sunnyside Irrigation Districts entered into a contract with the Crane Creek Irrigation Land and Power Company, under the terms of which the said irrigation districts agreed to purchase from the Crane Creek Irrigation Land and Power Company, and the Crane Creek Irrigation Land and Power Company agreed to sell to said irrigation districts, a sufficient interest in the reservoir, irrigation system, canals and water rights then owned and being constructed and to be constructed by said Crane Creek Irrigation Land and Power Company, sufficient to store in said reservoir, three acre feet of water for each acre of land assessed with benefits in said irrigation districts, and

sufficient interest in said canal and irrigation system to carry said water to and upon the land in said district; that in said contracts the irrigation districts agreed to pay the Crane Creek Irrigation Land and Power Company for same in coupon bonds of said districts at the rate of fifty dollars per acre for each acre of land receiving benefits therefrom and that the said contracts provided that the Crane Creek Irrigation Land and Power Company, when said systems were finished, should convey said interest to the districts free from all liens and claims of every description.

This is to further certify that said irrigation system has not yet been completed and final conveyances have not yet been made by Crane Creek Irrigation Land and Power Company to said irrigation districts for said interest in said reservoir and rights of way, water rights, etc.

It appears from the records in the office of the County Recorder of Washington County, Idaho, that there is a mortgage upon said reservoir, and other lands, in favor of Maney Bros. & Co., a co-partnership consisting of J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells, and it is conceded that said mortgage is a valid and subsisting lien against said lands as against the Crane Creek Irrigation Land and Power Company and said irrigation districts, and that so far as said Maney Brothers & Co. are concerned, and the said mortgage, the said

Crane Creek and Sunnyside Irrigation Districts have no defense against the same, and the conveyances that have been made to said reservoir, and the conveyances that may be made by the Crane Creek Irrigation Land and Power Company to them of the interest in said reservoir, and all conveyances which may be made prior to the satisfaction of said mortgage, will be subject to the lien of said mortgage.

Made in triplicate and signed this the 15th day of June, 1914.

CRANE CREEK IRRIGATION DISTRICT,  
(Seal) By Chas. C. Cleary, President.  
SUNNYSIDE IRRIGATION DISTRICT,  
(Seal) By O. M. Harvey, President.

“This is my signature on the last page of Maney Bros. Exhibit No. 6. The certificate is wrong in that it says that I am Secretary of the Crane Creek Irrigation District. It should have been Sunnyside Irrigation District and I meant to execute it on behalf of the Sunnyside Irrigation District as its Secretary. The same is true in the fore part of the certificate where it recites that it was resolved by the Board of Directors of the Crane Creek Irrigation District. It should have been Sunnyside Irrigation District. These resolutions were in duplicate and I evidently signed as Secretary the one that should have been certified by Miss Beck, the Secretary of the Crane Creek District. These were passed by both districts, identical in form, and they were afterwards transmitted by me directly to Maney Bros.”

The exhibit referred to as Maney Bros. Exhibit No. 6 is in words and figures following, to-wit:

“RESOLUTION.

*Be It Resolved*, By the Board of Directors of the Crane Creek Irrigation District, that the act of the President of this District in executing and delivering to Maney Bros. & Company in the name and for and on behalf of this District, the following certificate or agreement:

*This Is to Certify*, That on August 22, 1910, the Crane Creek and Sunnyside Irrigation Districts entered into a contract with the Crane Creek Irrigation Land and Power Company, under the terms of which the said irrigation districts agreed to purchase from the Crane Creek Irrigation Land and Power Company, and the Crane Creek Irrigation Land and Power Company agreed to sell said irrigation districts, a sufficient interest in the reservoir, irrigation system, canals and water rights then owned and being constructed and to be constructed by said Crane Creek Irrigation Land and Power Company, sufficient to store in said reservoir three acre feet of water for each acre of land assessed with benefits in said irrigation districts, and sufficient interest in said canal and irrigation system to carry said water to and upon the land in said district; that in said contracts the irrigation districts agreed to pay the Crane Creek Irrigation Land and Power Company for same in coupon bonds of said districts at the rate of

fifty dollars per acre for each acre of land receiving benefits therefrom, and that the said contracts provided that the Crane Creek Irrigation Land and Power Company, when said systems were finished, should convey said interest to the districts free from all liens and claims of every description.

This is to further certify that said irrigation system has not yet been completed and final conveyances have not yet been made by Crane Creek Irrigation Land and Power Company to said irrigation districts for said interest in said reservoir and rights of way, water rights, etc.

It appears from the records in the office of the County Recorder of Washington County, Idaho, that there is a mortgage upon said reservoir, and other lands, in favor of Maney Bros. & Co., a co-partnership consisting of J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells, and it is conceded that said mortgage is a valid and subsisting lien against said lands as against the Crane Creek Irrigation Land and Power Company and said irrigation districts, and that so far as said Maney Brothers & Co. are concerned, and the said mortgage, the said Crane Creek and Sunnyside Irrigation Districts have no defense against the same, and the conveyances that have been made to said reservoir, and the conveyances that may be made by the Crane Creek Irrigation Land and Power Company to them of the interest in said reservoir,

and all conveyances which may be made prior to the satisfaction of said mortgage, will be subject to the lien of said mortgage.

Made in triplicate and signed this the 15th day of June, 1914.

CRANE CREEK IRRIGATION DISTRICT,  
(Seal) By Chas. C. Cleary, President.

SUNNYSIDE IRRIGATION DISTRICT,  
(Seal) By O. M. Harvey, President.

be and the same is hereby ratified, approved and confirmed.

State of Idaho,  
County of Washington,—ss.

I, Ed R. Coulter, Secretary of the Crane Creek Irrigation District, do hereby certify that the foregoing is a full, true and complete copy of the resolution passed by the Board of Directors of said Irrigation District at a meeting thereof regularly called and held on the 18th day of Aug., 1914.

*In Witness Whereof*, I have hereunto set my hand and the seal of said corporation, this 3rd day of Sept., 1914.

ED R. COULTER, Secretary.

Subscribed and sworn to before me this . . . . day of July, 1914.

.....  
Notary Public.”

“I have frequently talked, and I have had frequent conversations with Mr. E. G. Wells, of Maney Bros. & Co., relative to that mortgage, and know that they

held a mortgage on this property, belonging to the Crane Creek Irrigation Land and Power Company. In fact, the mortgage is a matter of record in Washington County.

“The aggregate of the first and second bond issues of the Sunnyside Irrigation District is \$565,000.00. I have the data showing when these bonds were delivered by the districts and who purchased them. Where the construction work was in common for the two districts, it was paid for by the districts in the proportion of 32% by the Crane Creek Irrigation District and 68% by the Sunnyside Irrigation District. Where the works were not in common, where there was work that was entirely within one irrigation district, that irrigation district paid for the work in its entirety. Deliveries of bonds were made as follows: On April 13th, 1913, the Sunnyside Irrigation District delivered to the Crane Creek Irrigation Land and Power Company \$151,000.00 of bonds, and on the same date the Crane Creek Irrigation District delivered to the same corporation \$99,000.00 of bonds. These figures were all par or face value. That was the first delivery. At that time each of the districts received an estimate of the amount of work that had been done in the construction of the reservoir. A form of deed, my recollection is, was presented at that time. The deed was not formally delivered until a short time after that. The deliveries were based in part upon estimates furnished by the engineers, of the cost of the reservoir. \$51,000.00 of these bonds of the Sunnyside Irrigation District



work for construction work on the reservoir, and \$100,000.00 delivered on the execution and delivery of the indemnity bond called for by the terms of the contract. The Crane Creek Irrigation Land and Power Company delivered to the two districts a joint and several bond for the fulfillment of those two contracts of August 22, 1910, signed by the Aetna Accident and Liability Company of Hartford, Connecticut; and the \$100,000.00 par value of bonds were delivered to the Crane Creek Irrigation Land and Power Company on account of the delivery of the indemnity bond under the terms of the contracts calling for that; and the balance of \$51,000.00 of bonds were delivered on engineer's estimate showing the cost of the construction of the reservoir. \$75,000.00 of the \$99,000.00 of bonds delivered by the Crane Creek District were delivered on the execution of the indemnity bond, and the difference between \$75,000.00 and \$99,000.00 was delivered on the estimate of the engineer on the construction of the reservoir. The total amount of bonds delivered on account of the indemnity bond was \$100,000.00 by the Sunnyside District and \$75,000.00 by the Crane Creek District. The next delivery was on June 13, 1913. At that time the Sunnyside District delivered \$21,000.00 and the Crane Creek District \$5,000.00. Those deliveries were based on monthly estimates of the engineers. The next delivery was made on July 18, 1913, \$28,000.00 by the Sunnyside District and \$45,000.00 by the Crane Creek District. Those deliveries were based on monthly estimates of

the engineers. The next delivery was on September 17, 1913. At that time the Sunnyside District delivered \$487,000.00, and the Crane Creek District \$18,500.00. Those deliveries were based on estimates of the engineers. The next delivery was December 11, 1913. Now, an explanation occurs here. One of the exhibits there shows a contract of October 16, 1913, executed between all of these parties, the two districts and the Crane Creek Company, whereby all the remaining bonds were placed in escrow with the First National Bank of Weiser. Our information was that the Crane Creek Company had obtained a syndicate of bankers at Kansas City and Pittsburgh, who had agreed to take the whole issue at sixty cents on the dollar, and, for convenience, and to meet with the demands of that syndicate, all the bonds were escrowed with the bank, and with the agreement that as the monthly estimates came in from the engineer and were allowed and approved by the districts, that the districts, in lieu of actual delivery of bonds to the Crane Creek Irrigation Land and Power Company, give them orders upon this bank, trustee, to pay the money proceeds of the bonds, or, if they hadn't been sold, in lieu of the proceeds, to pay them the bonds direct; and this contract was again subsequently changed by the contract of November 21, 1913, which is also one of the exhibits, and under this contract the trustee was changed from the First National Bank of Weiser to the Commercial Trust Company of Kansas City, Missouri, under the same terms and conditions. There

were two estimates allowed and approved on December 11, 1913, and on that date the Sunnyside Irrigation District gave to the Crane Creek Irrigation Land and Power Company an order upon the Commercial Trust Company of Kansas City, Missouri, to pay to the power company the sale proceeds of \$38,300.00 of the coupon bonds at sixty cents, under that contract of November 21, 1913; and on the same date it gave another order to the same party on the Commercial Trust Company for the sale proceeds of \$19,964.00 of the bonds; and on the same date the Crane Creek Irrigation District gave two similar orders to the power company on the Commercial Trust Company, one for \$16,623.00 and the other for \$2,838.00. Those orders were based on the monthly estimates of the engineers. There were no deliveries between September 17, 1913, and December 11, 1913. It was during this time that Mr. Ford and Mr. Slick and others were in the east making arrangements to get the bonds sold, or were re-financing. The next delivery was made January 10, 1914; Sunnyside delivered an order for the proceeds of \$27,842.00, and Crane Creek for the proceeds of \$5,253.00, on the same basis as before, sixty cents on the dollar. The next delivery was made February 4, 1914; the Sunnyside District delivered \$12,963.66 in bonds and the Crane Creek \$5,031.08. That was the amount of the estimate. The bonds at that time, as at the previous deliveries, were held in escrow by the Commercial Trust Company under an escrow agreement between the districts and the Crane Creek Irrigation Land

and Power Company, and the orders were to pay the proceeds of so many dollars of bonds, as shown by the engineers' estimates, at the rate of sixty cents on the dollar. The next delivery was made on March 3, 1914, \$31,235.00 by the Sunnyside District and \$13,230.00 by the Crane Creek. That was the proceeds of that much of the bonds at par value, and the procedure was the same as at the previous delivery. The next delivery was April 1, 1914, Sunnyside for the proceeds of \$69,390.00, and Crane Creek for the proceeds of \$32,650.00 of the bonds. The next delivery was May 5, for the proceeds of \$33,335.00 of the bonds by Sunnyside, and \$26,675.00 by Crane Creek. The procedure was the same as on the previous estimates. On June 6th, Sunnyside, \$49,100.00; Crane Creek, \$15,700.00, based on engineers' estimates, and the proceeds were delivered by the escrow holder. The next delivery was on December 28th, 1914, and the amount was \$7,000.00 by Sunnyside, and \$2,000.00 by Crane Creek. Before this delivery the Commercial Trust Company had returned to the First National Bank of Weiser all the bonds that had not been sold. They still held a balance of cash on hand belonging to the districts, and this last order, as I recollect it, was given in duplicate, that is, it was given to the two banks as trustees. But the procedure was the same. That was for an estimate that had not been presented to the Board. It was not presented until December. All the bonds of the two districts have not been delivered. The Crane Creek Irrigation District still has on hand

and undelivered \$9,017.62, bond value at par, and the Sunnyside has \$26,170.24. Those bonds are held by the districts under the provisions of those contracts of August 22, 1910, as amended; when the Crane Creek Irrigation, Land & Power Company shall have completed its contract they will be entitled to the delivery of the remainder of those bonds."

E. D. Ford, a witness on behalf of the cross-defendants on cross-examination testified as follows:

"The first construction work done on the Crane Creek project after I entered into the contracts with the Districts was in October, 1911; that was done by Maney Bros. and that consisted of the building of the dam at the reservoir site. No work has been done on that dam in the way of construction since that time. The mortgage to Maney Bros. was given in connection with that work. The dam is across Crane Creek. The water is turned out of the reservoir and it flows down Crane Creek for some distance. It is then taken out of Crane Creek at the point marked on Sunnyside "Exhibit B" as the point of diversion. That is where Slick Bros. Construction Company commenced their work. I discussed with the two districts and their Board of Directors from time to time the financial arrangements that were made from time to time and the failure of those who contracted to buy the bonds to take them as they had agreed, and the difficulties that resulted from that. I kept the districts fully advised of my progress and of the negotiations and contracts that I made for the construction of these works and for the sale of these

bonds, and it was because of those negotiations and those contracts that I got extensions from time to time from the districts for the completion of these works. I advised the districts of the giving to Maney Bros. of that mortgage on the system about the time it was given. During the spring and summer of 1913, and frequently thereafter, I had conferences with Maney Bros. about the taking up of their mortgage. They were pressing for payment most of that time. They were going to foreclose during the spring, or the early spring of 1914, and I took those matters up with the district with the view of getting certain statements from the districts recognizing Maney Bros. mortgage. Maney Bros. Exhibit No. 6 is a resolution that I prevailed upon the districts to execute in order to get certain concessions from Maney Bros. At different times I undertook to renew underlying mortgages covering certain farm lands embraced in the Maney Bros. mortgage, and in order to renew those mortgages I had to obtain the consent of Maney Bros. to subordinate their mortgage to the new mortgage. I got the following letter from Maney Bros.:

July 17, 1914.

Mr. E. D. Ford,  
Weiser, Idaho.

Dear Sir:—

At the request of Mr. Wells, we enclose consent to subordinate Maney Bros. mortgage to the new mortgage on the land formerly held by J. A. Derig, this to become effective and to be delivered only upon the passage by the two irrigation districts of the resolu-

tions herewith enclosed. If the districts decline to pass these resolutions you will return all papers. If the resolutions are passed, please have the Secretaries of the two districts certify two of the copies, one for each district, and return to us, keeping the other copies for their files. Please also send us a copy of the agreement which Mr. Wells has signed, and which we are returning herewith.

Very truly yours,

RICHARDS & HAGA."

"The resolution which is marked 'Maney Bros. Exhibit No. 6' is one of the resolutions that was enclosed in that letter, and I presented those resolutions to the districts and the districts passed them in their board meetings."

A series of deeds from the Crane Creek Irrigation Land & Power Company to the Crane Creek Irrigation District numbered from 1 to 13, inclusive, and from the same Company to the Sunnyside Irrigation District numbered from 1 to 13, inclusive, were introduced in evidence by the cross-defendants. The first deed to each district was dated May 29th, 1913, and the last deed bears date August 15th, 1914, none of which deeds were recorded except the first deed to each district, which was recorded on the 19th day of November, 1914. The deeds referred to were substantially the same except as to the description of the properties embraced therein and the percentages conveyed to the districts.

The first deed to the Sunnyside District is in words and figures following, to-wit:

## "WARRANTY DEED.

*This Indenture*, Made the twenty-ninth day of May, in the year of our Lord one thousand nine hundred and thirteen, between Crane Creek Irrigation Land & Power Company, a corporation duly organized and existing under and by virtue of the laws of the State of Idaho, the party of the first part, and Sunnyside Irrigation District, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Idaho, party of the second part.

*Witnesseth*, That for and in consideration of \$151,000.00, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, by these presents does grant, bargain, sell, convey and confirm, unto said party of the second part, and to its successors and assigns forever, all the following described real estate, situate in the County of Washington and State of Idaho, to-wit:

An undivided forty-seven and two-tenths per cent. (47.2%) interest of, in and to that certain permit number 1720, issued by the State Engineer of the State of Idaho, under date of December 16th, 1905, to one Edwin D. Ford, and recorded in Book 6 at page 1720 of the record in said State Engineer's office at Boise, Idaho, and those certain permits issued by said State Engineer to Edwin D. Ford and numbered 6830 and



6834 respectively, and heretofore conveyed to the Company together with a like proportion of all the water thereby appropriated and all rights acquired under said permits; also forty-seven and two-tenths per cent. (47.2%) of the right of all flowage through the Northwest quarter of the Northeast quarter and the North half of the Northwest quarter of Section 19, Township 12 North, of Range 2 West of Boise Meridian in Idaho; and also forty-seven and two-tenths per cent. (47.2%) of the right of flowage through the Northeast quarter of Section 24, in Township 12, North, of Range 3 West of Boise Meridian in Idaho, heretofore conveyed to the company, to Grantor by Edwin D. and Hortense A. Ford, under date of May 9, 1910.

An undivided forty-seven and two-tenths per cent. (47.2%) interest of, in and to, all and singular, such right of way for canals, flumes and laterals as may be used in common by the Grantor and Grantee herein, and the Crane Creek Irrigation District acquired by the Grantor by purchase or by filing maps thereof as required by the regulations of the general land office of the United States and the acts of Congress in relation thereto, including an undivided forty-seven and two-tenths per cent. (47.2%) interest of, in and to said reservoir site, described in the certain indenture dated May 9th, 1910, between Edwin D. and Hortense A. Ford and the Grantor herein, which said indenture is of record in Book 26 of Deeds

at page 413 of the records in the office of the County Recorder of Washington County, Idaho.

An undivided forty-seven and two-tenths per cent. (47.2%) interest of, in and to, all completed portions of all canals, pipe lines, flumes, and aqueducts situated wholly within the boundaries of said irrigation district and as shown upon the plat attached to that certain contract in writing between the parties hereto, dated the 22d day of August, 1910.

All and singular, the completed portion of all main canals, distributing laterals, pipe lines, and flumes situate wholly within the boundaries of said irrigation district, and the same appear upon the plat above referred to, including rights of way for the same.

Hereby reserving unto party of the first part the sole right to use and enjoy all waters stored in said reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the second part the exclusive right to use the water impounded in said reservoir including the water hereby conveyed to party of the second part for the purpose of developing power provided the same shall not thereby be diminished in quantity or quality.

It is covenanted and agreed that this conveyance, when all the work completed in that agreement between the parties hereto, dated August 22d, 1910, and the extensions and amendments

thereof shall have been fully completed and performed, which said final conveyance shall contain particular and accurate descriptions including the courses and distances of rights of way for canals, and the canals, dams and other works, and a detail description of the reservoir site.

*Together* with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

*To Have and to Hold*, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors and assigns forever. And the said party of the first part, and its successors, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part, and its successors and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will *Warrant* and by these presents forever *defend*.

*In Witness Whereof* the party of the first part has caused its corporate name to be hereunto subscribed by its president, and these presents to be sealed with its corporate seal, duly attested by its

secretary, being thereunto duly authorized, all on the day and year first above written.

CRANE CREEK IRRIGATION LAND  
& POWER COMPANY,

(Seal) By E. D. Ford, Its President.  
E. P. Hall, Secretary.

State of Idaho,  
County of Washington,—ss.

On this 31st day of May, in the year 1913, before me, B. S. Varian, a notary public in and for said County of Washington, personally appeared E. D. Ford, known to me to be the president of Crane Creek Irrigation Land & Power Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I hereunto set my hand and affix my official seal, the day and year in this certificate first above written.

(Seal)

B. S. VARIAN,  
Notary Public.

James H. Hawley, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

*Direct Examination by Mr. Richards:*

Q. Governor, what is your business?

A. I am an attorney at law, and have been engaged in the practice of law in this state for over forty years.

Mr. Varian: We will admit his qualifications.

Q. I call your attention, Mr. Hawley, to the bill of complaint and the answers of the Portland Wood

Pipe Company, to foreclose a lien covering a little over \$10,000.00, and I ask you what would be the reasonable compensation for counsel in the foreclosure of that lien, taking into consideration the preparation of the bill, procuring the order for service upon twenty-five or thirty defendants, looking after the service upon those defendants, and preparing for the trial, involving the introduction of quite a large amount of testimony, so far as exhibits are concerned, and involving about \$10,000.00, and including the trial and the final disposition of the matter, preparing briefs and arguing the matter at the close of the case.

A. I would think ten per cent on the amount, \$1,000.00, would be a very reasonable fee.

Q. Calling your attention to a cross-bill to that bill which I just showed you, of Maney Brothers & Company, for the foreclosure of a mortgage involving about \$38,000.00, and the answers to that bill. The answers in a measure admit a large portion of it, but it involves the presentation of the main facts and the preparation of the case. What in your judgment would be a reasonable compensation for the foreclosure of that mortgage, involving something over thirty-eight thousand dollars?

A. Under the circumstances as you give them, as I understand them, I think about \$2,500.00.

Q. Calling your attention to the cross-complaint of the Slick Brothers Construction Company in that same proceeding, which involves the foreclosure of a mechanic's lien totaling about \$81,000.00, which

\$81,000.00 includes, however, the Portland Wood Pipe Company claim of \$10,000.00, and which involves the numerous answers thereto attached, and involves the preparation of the case, which is quite complicated, and the trial; the introduction of the testimony and exhibits, however, in the one case of the Portland Wood Pipe Company being the same exhibits as in this case, I ask you what would be a reasonable compensation for the foreclosure of that lien?

A. I think about five per cent, speaking in round numbers, which would be about \$4,000.00.

*Cross-Examination by Mr. Varian:*

Q. Taking into consideration, Mr. Hawley, the fact that the same counsel represent the original plaintiff, which is the material man, or company, furnishing materials, practically, as I remember it, not altogether, not more than three invoices, and also the mortgage cross-complainant, and also one of the construction companies, cross-complainant, all made defendants in the original bills, and these cross-bills, at least one of them involving the account of the original claimant as a material man for the contractor, supplying material to the contractor, would you say in such a state of the case that the entire amount for the whole business would be reasonable in the sum of \$6,000.00 or \$7,500.00?

A. I think it would; in fact I was taking into consideration the fact, as I understood it, that there were three distinct suits in the first place, and that they were connected together to a certain extent, each involving its own separate facts to a certain extent, and

each involving separate inquiries on the part of the attorney, and, taking all those things into consideration, the time necessarily spent in the preparation of the pleading and in the investigation, which would make a difference in my estimation than if the full \$120,000.00 had been included in the one suit in the first instance. As I understand the question, there is about \$120,000.00 involved.

Q. If the subject matter of the cross-bills is substantially the same, and the evidence upon one is largely applicable to the evidence in proof of the other, and if the mortgage suit was predicated upon the same contracts with the owners of the property, or the owner of the property, or the person interested in building the property, would not that make some difference?

A. Yes, I think it would, and I have taken that into consideration in making my estimate, and I have taken into consideration in my estimate or statement my own practice and what I charge under similar circumstances.

Q. And you make your own charges regardless of other people, do you not; you make your own charges in your business, regardless of other people?

A. I do. If I have no distinct contract, I charge what I think is correct. Sometimes those things are done by contract, of course.

Q. There is nothing very intricate in the matter of preparing a mechanic's lien

A. No, not as a general proposition.

Q. It requires no exceptional knowledge or ability to do that?

A. Possibly not. I have found in certain cases that it requires a great deal of careful examination both of law and of fact.

Q. You do not estimate the value of services in searching records in the same way that you estimate the value of a lawyer's legal services? Those services are performed by clerks and abstracters.

A. No. I would not put the work of clerks and abstracters on the same footing as the services of a lawyer who was competent to attend to a suit of that magnitude, but I would take into consideration the fact that the attorneys had to go over this same matter possibly even after it had been prepared by careful abstracters, the physical work involved, which, of course, would be done by the abstracter.

Q. In building contracts, or in contracts against builders, or persons who are erecting structures and completing works, the matter of the estimates and the values are determined as a rule by other people than the lawyers, and they accept their conclusions. You don't charge for that in the same way you would for legal services?

A. No, except the work involved in ascertaining the correctness of the conclusions, because I don't think any of us have found in our experience, when large sums are involved, or great interests involved, that we take the word of anybody except as to the figuring perhaps.



Q. I show you one of these cross-bills here, or at least a copy of it, which is principally made up of exhibits, contracts, copies of contracts, copies of the lien, all of which work, we may assume, is done by other people than the lawyers in the case, so the magnitude of that kind of service, however great it may be, would be determined as being in the nature of clerical work and not legal work.

A. If that is intended as a question, I should say it would be a combination of both, and while much of the work would be clerical work, it would require careful thought on the part of the attorney. I am judging these matters without any thorough understanding, Judge Varian, as to the real facts, but with a somewhat slight understanding in regard to it as conveyed by the attorneys, and basing my estimates upon that.

Q. Now as to the amounts involved, dependent upon the interpretation of contracts and the evidence of work done and performed, as well as omitted, does that matter weigh heavily with you in making your estimates, depending upon the amount?

A. Yes, sir. If I understand the question correctly, it would make a very marked difference; that is, in other words, the responsibility of assuming the control of litigation involving very large amounts of money should be paid for at a much greater rate than the responsibility of taking charge of a suit possibly involving the same principles but a much smaller sum. It is the responsibility that I think is one of the factors that should enter into the question of the

consideration of a fee on the part of an attorney. It might not call for any more physical work to undertake a foreclosure with \$100,000.00 involved than where there is \$1,000.00 involved, but from my standpoint it would look ridiculous to charge the same fees. The very fact of the importance of the suit would weigh upon the attorney and cause him to investigate far more carefully.

Q. Do you think that ten per cent is a reasonable amount for foreclosing a \$10,000.00 mechanic's lien claim, which is also embraced in one of the other cross-bills in the suit, and which is prosecuted by the same counsel?

A. I think \$1,000.00 is a reasonable figure, that is, ten per cent. for the \$10,000.00. However, if it was incorporated in another suit, and all of that, that would all depend.

Q. I say it is incorporated, as stated by Judge Richards, in one of the cross-bills in the case, by a contractor to whom this material was furnished, so there is practically an element of a double charge somewhere between the original bill and the cross-bill. What do you say about that?

A. I would say this, that I believe ten per cent would be a reasonable fee for the \$10,000.00. That I think that when we come to a large amount, anything over \$50,000.00, say like \$80,000.00, that a lawyer trying to do what was right and be reasonable in his charges, should charge in the neighborhood of five per cent. If one was incorporated in the other, it might make a reduction in the amount, to be taken

out of the last fee, taking into consideration, however, the fact that it involved the dual set of papers, and possibly a dual examination. A man would want to be thoroughly conversant with the facts, the labor involved, and the responsibility assumed, before he would want to positively answer.

Q. What is your answer to my question, where, as in this case, the Portland Wood Pipe Company, the original plaintiff here, filing the original bill, has a claim in round numbers of about \$10,000.00, for which you say counsel ought to receive \$1,000.00, but which is also embraced in the cross-bill of one of the defendants to the suit, a contractor with whom the plaintiff dealt and to whom the material furnished by the plaintiff was furnished. Based upon the amount of the alleged claim, eighty odd thousand dollars, which includes the ten thousand you have already fixed a fee for, or at least given an opinion or judgment upon, would you say under those circumstances that for the original bill an attorney should receive the same amount as he would if he brought the suit alone?

A. I think that under those circumstances probably out of the larger suit in which it was incorporated he should deduct that amount of the five per cent, unless there were other matters involving dual labor leading up to it.

Q. You think there ought to be some difference made?

A. Oh, yes, that is, under ordinary circumstances.

Mr. Varian: That is all.

## ORDER SETTLING STATEMENT.

The within and foregoing statement of evidence being tendered to me for settlement and allowance, and it appearing to me that said statement was lodged in due time with the Clerk of this Court, and that notice of such lodgment and of the time of the proposed settlement was given by Maney Brothers & Company, through their solicitors, to all parties to said appeal, and all amendments and objections having been considered, and the statement with such amendments as have been allowed having been duly engrossed, *It is certified* that said statement is in all respects true, complete, correct, properly prepared, and contains a full transcript of the evidence reduced to narrative form pertaining to the issues raised by the Assignment of Errors.

Dated August 23, 1915.

FRANK S. DIETRICH,  
District Judge.

Filed August 23rd, 1915.

---

(Title of Court and Cause.)

*Memorandum Decision on Claim of Plaintiff for  
Lien, and Maney Brothers' Mortgage.*

May 17, 1915.

Richards & Haga, Attorneys for Plaintiff, Defendant Slick Bros. Construction Co., and Maney Bros. & Co.

C. S. Varian and E. R. Coulter, Attorneys for Irrigation Districts.

B. S. Varian, Attorney for Crane Creek Irrigation, Land & Power Co.

DIETRICH, DISTRICT JUDGE.

The suit was commenced by the Portland Wood Pipe Company, as plaintiff, to foreclose a mechanic's lien for material furnished to the defendant Slick Brothers Construction Company, for the construction of an irrigation system in Washington County, Idaho, against Slick Brothers Construction Company, a corporation, the Crane Creek Irrigation, Land & Power Company, a corporation, Maney Brothers & Company, a corporation, and others, including the Crane Creek Irrigation District and Sunnyside Irrigation District, irrigation districts organized under the laws of Idaho, as defendants. Briefly stated, the facts out of which the controversy has grown are, that, in August, 1910, the defendant Crane Creek Irrigation, Land & Power Company, reciting that it was the owner of certain water rights, a reservoir site, and rights of way for canals upon which certain construction work had been done, entered into separate contracts with the two defendant irrigation districts, under the terms of which it was to complete the construction of the reservoir and canals as called for by plans and specifications attached, and, with certain reservations, to make conveyance thereof in undivided interests to the two irrigation districts severally, for the permanent ownership and use by them for the irrigation of the lands which they embrace. In payment for the system when and as the same should be completed the districts agreed to turn over to the Power Company

their several coupon bonds at their face value to the amount of the specified purchase price. In some of their features the contracts are unusual, and are probably to be accounted for by the fact that under the laws of the state, as they existed at the time of the execution of the contract, irrigation districts were authorized to dispose of their bonds only by a sale for cash to the highest bidder or by an exchange thereof at par for irrigation works; they could not use them in payment for construction work. Such is the view taken by the Supreme Court of California of a law of that state, of the same general purpose and scope. *Hughson v. Crane*, 115 Cal. 404; 47 Pac. 120. The same court later held that it was competent for districts to enter into contracts for the purchase of systems to be constructed. *Stowell v. Rialto Irr. Dist.*, 155 Cal. 215; 100 Pac. 248. It is to be inferred that the contracts here were drawn to conform with the views expressed in these decisions.

The Power Company entered into a contract for construction work on the system with Maney Brothers & Company, and later with Slick Brothers Construction Company for the completion of the system. It settled with Maney Brothers by the execution of a note for a large amount, secured by a mortgage upon the system only a small part of which was then completed, and with Slick Brothers Construction Company by a written agreement, pursuant to which it was to deposit with a trustee certain bonds and securities, the proceeds of which were to be paid out to creditors in the manner therein provided. At the

time this suit was commenced there was due to Maney Brothers, on account of the mortgage note, \$35,986.10, with interest thereon at the rate of six per cent from December 27, 1913. According to the contention of Slick Brothers Construction Company, there was also due to it a large balance, for which it had filed notice of mechanic's lien, which it sought to foreclose in this suit. At the close of the trial I held that the Power Company had substantially complied with the agreement of settlement by placing the bonds and other securities in the hands of the trustee agreed upon, and therefore denied relief to Slick Brothers. Admittedly there is due to the Plaintiff, the Portland Wood Pipe Company, \$10,317.44, which is the basis of the lien upon which the complaint is predicated.

The system was completed, and in accordance with the contract between the irrigation districts and the Power Company it was conveyed in separate shares to the districts, and at the time the suit commenced they were the owners of the legal title thereto. As already stated, there is no controversy as to the amount due from the Power Company to Maney Brothers, or from Slick Brothers Construction Company to the Portland Wood Pipe Company, but the irrigation districts contend that they hold the property free from both the mortgage and the plaintiff's claim of lien.

First disposing of

*The Lien Claim of the Portland Wood Pipe Co.*

Briefly stated, the districts' contention is that they

are municipal corporations, that their property is dedicated to public uses, and that therefore it is exempt from the operation of the mechanic's lien laws of the state. It is argued that while Section 5110 of the Revised Codes in general terms confers the right of lien upon any person performing labor upon or furnishing materials to be used in the construction of any work, the section is not to be deemed to extend the right of lien to property belonging to the state or municipal corporations. Attention is called to Section 5111, which expressly provides for a lien in favor of sub-contractors, laborers, and persons furnishing material (but not original contractors), in case of structures belonging to "any county, city, town, or school district," and to still another provision of law by which contractors are required to furnish bonds to municipal corporations, including irrigation districts, to indemnify not only the corporation, but also any person furnishing labor or material, and the conclusion is drawn from the several provisions that the legislature did not intend to provide for a lien in favor of either a material man or a laborer in the case of structures or improvements belonging to an irrigation district. It would be strange for the legislature to extend the right of lien to buildings and other property belonging to a county, city, town, or school district, and withhold it in the case of an irrigation district; and it is difficult to believe that such was the intention. But that question is not involved here. The material furnished by the plaintiff was for the construction of works be-



longing to the Power Company, not to the irrigation districts. It is true that the system was to be conveyed to the irrigation districts, but doubtless as they understood the law they could not contract to pay bonds for the construction of irrigation works, and they therefore intended that the construction should be for the Power Company, and that they would buy the completed structures. That being the case, they took title subject to such liens as incumbered the property when it came into the possession and ownership of the Power Company, and very clearly the Power Company acquired title to the property subject to the liens of the workmen who built it and the material men who furnished the material for its construction. *Greer v. Cache Valley Canal Co.*, 4 Idaho, 280; 38 Pac. 653. *Garland v. Irrigation Company*, 9 Utah, 350; 34 Pac. 368; 163 U. S. 687. *Fosdick v. Schall*, 99 U. S., 235. *Holt v. Henley*, 232 U. S. 637. The districts will not be permitted to take a position now inconsistent with that which they maintained at the time this material was furnished. It may be assumed that before the plaintiff furnished the pipe material it made inquiry and learned the nature of the contract between the Power Company and the irrigation districts, and was thus advised that the irrigation districts did not claim that they owned the property, or that the Power Company was merely a construction company. There is no contention here that the districts required the Power Company to give a bond, which was their bounden duty to do if it was deemed to be a construction company. Un-

doubtedly the irrigation districts held out to the world that they were merely the purchasers of this property, and were not engaged in its construction. They cannot now be permitted to change their position, to the hurt of persons who in good faith dealt with the Power Company as the owner of the property.

I reject the suggestion that inasmuch as Slick Brothers Construction Company entered into the contract of settlement already referred to, with the Power Company, and thus waived its lien, the right of the plaintiff was thereby cut off. The statute confers upon the material man an independent right to a lien of which he cannot be divested without his consent.

#### *The Maney Brothers Mortgage.*

We now come to a consideration of the validity and dignity of the Maney Brothers mortgage. There is no dispute that there remains due thereon a balance of \$35,986.10, besides interest from December 27, 1913, at the rate of six per cent per annum. The Power Company, mortgagor, makes no resistance, and the only defense is that interposed by the irrigation districts, which contend that under their contract of purchase and the subsequent deeds made in pursuance thereof, they took an unincumbered title to the property. As already stated, the contract of purchase was executed on August 22, 1910, whereas the mortgage was not made until September 29, 1911; and the deeds were all executed at still later dates. Presumably a question having arisen as to the

status of the mortgage lien, the mortgagees on July 10, 1914, procured the passage of a resolution, at a joint meeting of the boards of directors of the two districts, expressing the view of the boards that the title received by the districts was subject to the mortgage, but there was appended an express disclaimer of any intention to waive any rights which the districts then possessed. It is scarcely necessary to observe that with this proviso the resolution did not even purport to enlarge the rights of the mortgagees. Later, namely, on August 18, 1914, the boards of directors, acting separately, passed a resolution ratifying a certificate executed by the president of each district, dated June, 1914, certifying to certain undisputed facts touching the history of the transaction and purporting to concede that the mortgagees' rights were superior to those of the districts. But both the certificate and the subsequent ratification were without consideration, and even were it to be assumed that an irrigation district may be estopped by the unauthorized acts of its officers, there were wanting here some of the essential elements of estoppel. I am therefore clearly of the opinion that both the resolutions and the certificates must be laid aside as having no efficacy whatsoever.

There remains the general question whether the transfer consummated by the deeds delivered from time to time as portions of the system were completed, relates back to the date of the contract and cuts off the intervening mortgage lien. It is conceded that for certain purposes at least this doctrine

of relation is to be recognized, but it is not to be given effect here, it is argued, because it would work an injustice and it is never invoked where such would be the result. The supposed injustice lies in the fact that if the mortgage is defeated the mortgagor may be unable to recover all of the mortgage debt. The gist of the contention seems to be that in case of an executory contract for the sale of real property the vendor retains the power to transfer the legal title to a third person or subject it to a lien, and in such cases the transferee or mortgagee is subrogated to the rights of the vendor, and is entitled to receive the unpaid portion of the purchase price. Specifically it is urged that the mortgage lien here attached to the unpaid purchase price, and that the districts having notice, both constructive and actual, of the existence of the mortgage, paid the Power Company at their peril. But the application of the principle to the facts in hand is not so plain or simple. The contract in question was for the purchase of an indivisible unit of property. No substantial part of it was in existence at the time the contract was made; it was largely to be created before it could be transferred. Admittedly, when completed it was to be conveyed free from all incumbrances. What then were the rights and duties of the districts? Clearly it was their right to take such course as was reasonably necessary to secure the performance of the contract, and, as already stated, one of the provisions of the contract was that they should receive title to the completed system free from incumbrances, of which con-

dition mortgagees at all times had knowledge. Now what in fact did they do? So far as the record shows, they paid the purchase price by turning their bonds over to the Power Company to be used by it in procuring the construction of and title to the property conveyed by the contract, and the bonds were so used. In view of the record, it is idle to talk about withholding the purchase price and applying it to the discharge of the mortgage indebtedness. Had such a policy been suggested at the outset the contractors would doubtless have declined to proceed with the work, and if it had been adopted after the work was done mechanic's liens would have been asserted against the property. That the lien of those who, by supplying labor and material, created the property, was superior to the equity of the districts, I have already held, and that it was superior to the mortgage lien is scarcely open to controversy. Under such circumstances, it was the right of the districts to see that the purchase price was applied to the discharge of the superior liens; those of contractors, laborers, and of material men. If we assume that thereafter it was their duty to withhold from the vendor and pay to the mortgagees the balance, it need only be said that there is no showing that there was any balance. So far as appears none of the bonds constituting the purchase price has been turned over to or retained by the Power Company for its own profit.

It is now quite immaterial that the mortgage indebtedness originated in construction work done by

the mortgagees upon a branch of this irrigation system. If we assume that up to the time they took the mortgage their right to a mechanic's lien remained unimpaired, they abandoned that right by taking the mortgage. It may very well be true that if they had then insisted upon such a lien the project would have fallen through and they would have been left with worthless security. But however that may be, and whatever may have been their motives, they waived their statutory lien and took the mortgage, and their status here is that of a mortgagee and nothing more.

There is this further consideration: The districts, as we have seen, were under no obligation to pay the Power Company money; the price was to be paid in bonds. If the mortgagees were resting upon the theory that as holders of a mortgage they were in a sense subrogated to the right of the Power Company to receive the purchase price, why did they not demand that a part of the purchase price be turned over to them? They apparently knew that the bonds were being delivered, and yet made no demand or protest. Great difficulty was experienced in negotiating the bonds even at heavy discounts. From the record can we say that the mortgagees would have been willing to take them at their face value or for that matter at any price? Upon their own theory, their mortgage at most conferred upon them a conditional right to receive a part of the unpaid purchase price. But the purchase price consisted not of money but of bonds, and at no time during the entire trans-

action did they intimate a willingness to accept bonds, nor up to the present time have they manifested such willingness. They are insisting upon the payment of their claim in money. As against their debtor, the Power Company, such is their right, but in no view of the law, upon any state of facts either real or assumed, was it ever the duty of the districts to pay them any part of their demand in money. In view of these considerations it is thought that the lien of the mortgage does not extend to such property rights and interests as were covered by the contract and have been conveyed to the districts pursuant to the terms thereof. A foreclosure will therefore be granted only as to the other property described in the mortgage, including the interest reserved by the Power Company in the irrigation system.

As to attorney's fees, possibly the amount testified to, namely, \$1,000.00, would not be excessive for the Portland Wood Pipe Company, if counsel who represent it were not otherwise employed in the case, but taking into consideration the fact that the same counsel also represent the mortgagees and Slick Brothers, I am inclined to think \$750.00 will be an adequate allowance on this account. As to Maney Brothers, their principal controversy, namely, that their lien extends to the property of the irrigation districts, is found to be without valid basis, and insofar as the legal services pertain to that controversy, they must themselves bear the expense. For other services they are entitled to recover, and \$1,000.00 will be awarded on account thereof.

My conclusion as to the Slick Brothers claim was announced orally. As to the Comerford claim, after a ruling upon the controlling questions, I am advised of a complete settlement between the interested parties. Both the cross-complaint and the counter-claim will therefore be dismissed as settled.

Counsel for the plaintiff will draught form of decree and submit the same to other counsel in the case.

Filed May 17, 1915.

---

(Title of Court and Cause.)

DECREE.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was *Ordered, Adjudged and Decreed* as follows, viz:

1. That the defendants Idaho National Bank, a corporation, C. R. Shaw Wholesale Company, a corporation, Utah Fire Clay Company, a corporation, Pete March, G. A. Heman, J. M. Pinckard, F. A. Squier, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, James M. Magee, C. A. Smith, J. L. Smith, George F. Smith, Claud F. Smith, A. T. Schwab, A. L. Chenoweth and George C. Cater have no interest, lien, claim, or demand on or against the irrigation works, water rights, canals, structures, lands and premises hereinafter described, or any part thereof; and plaintiff's said Bill and the several cross-bills filed herein are dismissed as to H. H. Begley, Henry Whitmore, L. F. Easton, J. C. Toney, Thomas



Sherry and E. H. Hasbrouck, originally made parties defendant in this cause.

2. That the defendant and cross-complainant S. C. Comerford take nothing by his cross-complaint herein, and the cross-bill of said S. C. Comerford is hereby dismissed.

3. That said Portland Wood Pipe Company do have and recover from the defendant Slick Brothers Construction Company, Limited, the sum of \$9,733.94 with interest thereon at the rate of eight per cent. (8%) per annum from the 24th day of June, 1914, and the sum of \$6.60 for recording mechanic's lien filed by said plaintiff and described in its bill of complaint, and the further sum of \$750.00 attorney's fee, making in the aggregate the sum of \$11,244.30, together with its costs of suit, taxed at \$137.60.

4. That the said plaintiff Portland Wood Pipe Company is entitled to and has a first charge and lien for the security and payment of the above sums of money upon all the right, title, and interest of the defendants Sunnyside Irrigation District and Crane Creek Irrigation District in and to the following described property:

(a) That certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West, B. M., Washington County, Idaho, application for right of way for which was filed in the United States Land Office at Boise, Idaho, by one E. D. Ford on the 3rd day of September, 1907, and which said application was approved by Thomas

Ryan, Acting Secretary of the Interior, on the 26th day of October, 1907; and which said reservoir and reservoir site is more particularly described in said application and on the duplicate map filed in connection with said application and kept on file in the United States Land Office at Boise, Idaho, and the same for which said reservoir is situated in the Southeast Quarter (SE $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ), Section Nineteen (19) of said township and range; and all lands situated within said reservoir site, including the right of way secured as aforesaid from the Government of the United States.

(b) All canals, ditches, headgates, flumes, pipe lines, laterals, and other structures, dams and works used, or intended to be used, or required in connection with the distribution of the water from said reservoir and carrying and distributing said water to the place or places of intended use; and all rights of way therefor, and particularly that certain canal on the southerly side of Crane Creek and crossing the west boundary line of the Crane Creek Irrigation District near the center of Section 7, Township 11 North, Range 3 West, Washington County, Idaho, and extending thence in a southerly direction through Sections 7, 18, 19 and 30, and into Section 31 of said Township and range; thence in a northerly and easterly direction through said Sections 31 and 30 and into and through Sections 25 and 26 in Township 11 North, Range 4 West; thence in a southerly and westerly direction through Sections 1, 2, 11, 10, 15, 16, 21, 28, 20, 29, 17, 19, and 18 in Township 10 North, Range

4 West, B. M., and thence in a southerly and westerly direction through Sections 13 and 24 to a point near what is known as Buttermilk Slough in the Northeast Quarter ( $NE\frac{1}{4}$ ) of Section 23, Township 10 North, Range 5 West, B. M.; and also that certain siphon and branch canal branching off or extending from the main canal, hereinbefore described, in the Northwest Quarter ( $NW\frac{1}{4}$ ) of the Northwest Quarter ( $NW\frac{1}{4}$ ) of Section 36, Township 10 North, Range 4 West, B. M., and extending across Weiser River in a northeasterly direction through Sections 35, 26, 23, and 22, and in a southerly and westerly direction through Sections 27, 28 and 32, Township 11 North, Range 4 West, B. M.; and all branch canals, main and subordinate laterals, service ditches, pipe lines, headgates, and other structures of every kind and nature used, or intended to be used, in connection with said irrigation system, or any part thereof, being the identical irrigation system constructed by the Crane Creek Irrigation Land & Power Company under its contract with the defendants Sunnyside Irrigation District and Crane Creek Irrigation District, and in which system and irrigation works said Crane Creek Irrigation Land & Power Company has conveyed, subject to plaintiff's said lien, an undivided 22.4% interest to said Crane Creek Irrigation District, together with all of what is known as the Smelter Lateral and the Weiser River Siphon; and in which said system and irrigation works said Crane Creek Irrigation Land & Power Company has conveyed to the defendant Sunnyside

Irrigation District, subject to plaintiff's said lien, an undivided 47.2% interest, and all of what is known as the High Line Lateral Sunnyside Ditch, and also what is known as the Low Line Lateral as built both easterly and westerly from what is known as the Cove Creek Siphon.

(c) Also all water rights and rights to the use of water in connection with the reservoir and irrigation system, works and structures, hereinbefore described, acquired by said Defendants, Sunnyside Irrigation District and said Crane Creek Irrigation District, under their several contracts with the defendant Crane Creek Irrigation Land & Power Company, and particularly the interest of said Districts in the following permits issued by the State Engineer of the State of Idaho to the said Crane Creek Irrigation Land & Power Company, said permits being issued on the dates, and numbered and recorded in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.

Permit No. 6832, recorded Book 20, page 6832, issued Sep. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sep. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

Permit No. 8507, recorded Book 27, page 8507, issued Aug. 10, 1912.

5. That the said plaintiff Portland Wood Pipe Company is entitled to and has a charge and lien for the security and payment of the above sums of money upon all the right, title and interest of the Crane Creek Irrigation Land and Power Company in and to the reservoir, canals, water rights, irrigation system, works and structures above described, which said lien or charge is subject only to the lien of the mortgage of Maney Brothers & Company, hereinafter referred to; and that the interest of said Crane Creek Irrigation Land and Power Company upon which plaintiff is adjudged and decreed a second lien or charge, subject as aforesaid to the mortgage of Maney Brothers & Company, is an undivided 30.4% in said canals, irrigation works, water rights, structures and reservoir, to a reservoir capacity of 70,617 acre feet, and all of the reservoir capacity in excess of 70,617 acre feet and all the right to the use of the water impounded in said reservoir for the development of power, being all the interest in said irrigation system, reservoirs, canals and water rights not conveyed by said Crane Creek Irrigation Land and Power Company to the said irrigation districts, and the interest so conveyed being as aforesaid an undivided 22.4% to said Crane Creek Irrigation District and an undivided 47.2% to said Sunnyside Irrigation District, with a reservation in said Crane Creek Irrigation Land and Power Company of all water stored in said reservoir in excess of 70,617 acre feet.

6. That the mechanic's lien to the said plaintiff Portland Wood Pipe Company is prior and superior

to any of the claims or liens of the defendants in this cause, except as to the interest of said Crane Creek Irrigation Land and Power Company in said irrigation system, reservoir and water rights, as to which interest the mechanic's lien of said Portland Wood Pipe Company is subject and subordinate to the mortgage of Maney Brothers and Company hereinafter referred to.

*It is Further Ordered, Adjudged and Decreed,* That the defendant Slick Brothers Construction Company, Limited, shall within thirty days after the entry of this decree pay, or cause to be paid, to said Portland Wood Pipe Company, or to the Clerk of this Court for the use and benefit of said plaintiff, the sums of money hereinbefore mentioned, together with interest thereon from the date of entry of this decree to the date of such payment at the rate of seven per cent. (7%) per annum, and that unless said payment be made by said defendant Slick Brothers Construction Company, Limited, or by any of the other defendants in this cause, or by any one in their behalf, within the time and in the manner herein described, all the property hereinbefore described may be sold as hereinafter directed to satisfy said claim of plaintiff; and that under and by said sale all equity of redemption, except as hereinafter provided, of the defendants, and each and every of them, and of any and all persons claiming by, through or under said defendants, or either of them, except the lien or claim of said Maney Brothers and Company in and to the said property, lands, rights and franchises,

be foreclosed and cut off and forever barred, and that said property be sold as an entirety and in one parcel without valuation, or appraisement, but subject to the prior lien of the mortgage of Maney Brothers and Company against the interest of said Crane Creek Irrigation Land and Power Company in said property, at public auction to the highest bidder or bidders at the Court House in Weiser, Washington County, State of Idaho, on a day or days to be fixed by the Special Master of this Court, and public notice of such sale and the time and place thereof, together with the manner and the terms upon which said sale is to be conducted, shall be given by such Special Master in the manner following, to-wit:

Said Special Master shall give notice of such sale by advertisement in a newspaper published at Weiser, Washington County, Idaho, once a week for at least four weeks next prior to such sale, and said notice shall, among other things, briefly describe in general terms the property and irrigation works to be sold, making reference to this decree for a full description thereof; and such Special Master shall have the power to adjourn said sale from time to time to a future date by oral announcement made at any time before the sale, or at the time noticed for such sale, by consent of the solicitors for plaintiff, or either of them, or the approval of the Judge of this Court, without prejudice to the notice or notices of sale and without necessity of publishing any further notice; but the Special Master may nevertheless give

such notice of his action by publication or by posting at the front door of said Court House, or otherwise, as he may deem fit.

That any party to this action may become a bidder or purchaser at said sale. That said sale shall be for cash, ten per cent. (10%) to be payable at the time of said sale, and the balance to be paid at the time of the confirmation by this Court of said sale.

That if the plaintiff Portland Wood Pipe Company shall bid in said property, then and in that event said bidder shall be entitled to have its judgment, or so much thereof as may be necessary, credited upon such bid instead of paying cash, paying, however, a sufficient sum in cash to satisfy and discharge all expenses of such sale.

That said Special Master shall make full report of his proceedings hereunder, and such supplemental reports from time to time as may be necessary and desirable to show fully his action in the premises; and upon said Special Master filing his report of sale, the purchaser or any party to this suit may move for confirmation thereof, and a time shall be set for the hearing of said motion and such objections as may be made to said confirmation; and if the sale be not confirmed a re-sale shall be ordered as authorized by law; and upon any such re-sale the same proceedings shall be had as upon the original sale, save and except that no further notice thereof need be given than a brief notice of the time and place of re-sale referring to the notices first published for the terms and conditions thereof, and for a de-



scription of the property, which notice shall be published for such duration as the Court in its order for re-sale may direct.

*It is Further Ordered, Adjudged and Decreed,* That upon payment of the purchase price by the purchaser or purchasers of said property, that said Special Master shall execute and deliver a deed conveying the property purchased to said purchaser or purchasers, or his or their successors or assigns, and upon the execution and delivery of such deed and the expiration of the period of redemption as hereinafter fixed, the grantee under said deed shall be let into the possession of the premises conveyed, and shall be entitled to hold and enjoy and possess said premises and property and all the rights, privileges, immunities and franchises thereto appertaining, free and clear of any lien or liens of any of the defendants herein, except the lien of the mortgage of Maney Brothers and Company as to the interest of said Crane Creek Irrigation Land and Power Company in said reservoir, water rights, canals and irrigation works.

*It is Further Ordered, Adjudged and Decreed,* That in case the proceeds of said sale shall prove to be insufficient to provide for the payment in full of the sums hereinbefore mentioned and described, then such Special Master shall find and report to this Court the amount of such deficiency or deficiencies, and, such report being confirmed by this Court, plaintiff shall be entitled to judgment therefor against the defendant Slick Brothers Construction

Company, Limited, and to have execution issued thereon pursuant to the rules and practice of this Court.

*It is Further Ordered, Adjudged and Decreed,* That W. C. Dunbar, Esq., of Boise, Idaho, be, and he is hereby, appointed Special Master to execute this decree and make the said sale, and to execute and deliver the deeds of conveyance of the property sold to the purchaser or purchasers thereof. As soon as any sale shall have been made by the said Special Master, in pursuance of this decree, he shall report the same to this Court for confirmation, and shall from time to time thereafter make such further supplemental reports as shall be necessary to keep the Court and the parties to this suit properly advised of his proceedings in the execution of this decree.

*It is Further Ordered, Adjudged and Decreed,* That the defendant Crane Creek Irrigation Land and Power Company, hereinafter sometimes called the Crane Creek Company, duly made, executed and delivered to said Maney Brothers and Company the note and mortgage described in said cross-complainant's cross-bill, and that such note was duly endorsed by the defendants, E. D. Ford, A. G. Butterfield and R. C. McKinney, and that said E. D. Ford, A. G. Butterfield and R. C. McKinney are liable for the payment of the full amount due said cross-complainant.

*And It is Further Ordered, Adjudged and Decreed,* Relative to the claim of said Maney Brothers and Company, as follows, to-wit:

1. That said Maney Brothers and Company do have and recover from the defendant Crane Creek Irrigation Land and Power Company, E. D. Ford, A. G. Butterfield and R. C. McKinney, and each of them, the sum of \$35,986.10, with interest thereon at the rate of six per cent. (6%) per annum from the 27th day of December, 1913, and the sum of \$1,000.00 as attorney's fee for the foreclosure of said mortgage, making in the aggregate the sum of \$40,140.00, and costs and disbursements herein, taxed at \$65.60.

2. That the payment of the aforesaid sums is secured by the said mortgage from said Crane Creek Company to said cross-complainant, described in the cross-complaint and bearing date the 29th day of September, 1911, which said mortgage is a first charge and lien upon all the right, title and interest of the defendant Crane Creek Irrigation Land and Power Company in the lands and premises, reservoir, canals, irrigation works, structures and water rights hereinbefore described; and that the interest of said Crane Creek Irrigation Land and Power Company, subject to the conditions hereinafter contained, in said irrigation system is an undivided 30.4% in said canals, irrigation works, water rights, structures and reservoir (excepting those certain canals and laterals hereinbefore adjudged as having been entirely conveyed to the Crane Creek Irrigation District or the Sunnyside Irrigation District), until the capacity of the reservoir amounts to 70,617 acre feet; and said Crane Creek Company is the owner,

subject to said mortgage, of all reservoir capacity in said reservoir in excess of 70,617 acre feet, and of all right to the use of the water impounded in said reservoir for the development of power.

3. That the mortgage of said cross-complainant is prior and superior to any of the claims or liens of the said defendants in this cause as against the right, title and interest, and the whole thereof, of said Crane Creek Company in and to the said reservoir, canals, water rights, irrigation system, works and structures; but the interest in said irrigation works, reservoir, water rights, canals and structures conveyed by said Crane Creek Company to the Sunnyside Irrigation District, to-wit: An undivided 47.2%, and the interest conveyed by said Crane Creek Company in said property, irrigation works, water rights, reservoir, canals and structures to the Crane Creek Irrigation District, to-wit: An undivided 22.4% interest, are free and clear of the lien of said mortgage, and said cross-complainant Maney Brothers and Company has no lien, claim or demand whatsoever on or against the interests of said Crane Creek Irrigation District and of said Sunnyside Irrigation District in and to the said reservoir, irrigation works, water rights, canals and structures.

4. That the said mortgage of the cross-complainant Maney Brothers and Company, is also a first charge and lien for the security of the payment of the sums of money so due cross-complainant, as aforesaid, as against any right, title and interest of the defendants herein in and to the following described lands and premises:

SE $\frac{1}{4}$  of Sec. 5

E $\frac{1}{2}$  of the SE $\frac{1}{4}$ , and the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of  
Sec. 10

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

E $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Sec. 10

N $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 17

E $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Sec. 17

SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 8

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , and the E $\frac{1}{2}$  of the SW $\frac{1}{4}$   
of Sec. 11

NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 14

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ , and the N $\frac{1}{2}$  of the NW $\frac{1}{4}$ ,  
and the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 12

Lot No. 4, and the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 7

All in Township Ten (10) North, Range Four  
(4) West, B. M.

SW $\frac{1}{4}$  of Sec. 27

N $\frac{1}{2}$  of the NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ ,  
and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 13

All in Township Eleven (11) North, Range  
Four (4) West, B. M.

E $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 12, Township Ten (10)  
North, Range Five (5) West, B. M.

NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 9

SW $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Sec. 9

SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 7

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 8

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 8

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 9

SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10  
 NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 10  
 All in Township Ten (10) North, Range Four  
 (4) West, B. M.

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 33  
 SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 33  
 NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33  
 NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33  
 SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33  
 SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33  
 NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 33  
 NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 33  
 All in Township Eleven (11) North, Range  
 Four (4) West, B. M.

SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 2, Township Ten  
 (10) North, Range Five (5) West, B. M.

NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10  
 SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10  
 SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10  
 NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10  
 NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10  
 SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10  
 SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 10  
 NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 11  
 NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 13  
 NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 13  
 NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 14  
 NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15  
 NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15  
 SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 15

All in Township Eleven (11) North, Range Six (6) West, B. M.

SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 36

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 36

All in Township Eleven (11) North, Range Five (5) West, B. M.

5. That the defendants Crane Creek Irrigation Land and Power Company, E. D. Ford, A. G. Butterfield and R. C. McKinney shall within thirty days after the entry of this decree pay, or cause to be paid, to said cross-complainant Maney Brothers and Company, or to the Clerk of this Court for the use and benefit of said cross-complainant, the sums of money hereinbefore mentioned, to-wit: The sum of \$40,140.00, together with costs and disbursements herein, and interest thereon from date of entry of this decree to the date of such payment at the rate of seven per cent. (7%) per annum; and if such payment be not made by said defendants, or by any one of them, within the time and in the manner herein described, all the property hereinbefore described and upon which the mortgage of said cross-complainant has herein been adjudged and decreed a lien may be sold as herein directed to satisfy said claim of the said cross-complainant; and that under and by said sale, all equity of redemption, except as hereinafter provided, of said defendants and

each and every of them, and of any and all persons claiming by, through or under said defendants, or either of them, in the said lands and premises, reservoir, canals, irrigation system, works, structures and water rights, be foreclosed, cut off and forever barred, and that said property be sold as an entirety and in one parcel, without valuation or appraisal, at public auction to the highest bidder or bidders, at the Court House in Weiser, Washington County, State of Idaho, on a day or days to be fixed by the said Special Master of this Court, and public notice of such sale and the time and place thereof, together with the manner and the terms upon which said sale is to be conducted, shall be given by such Special Master in the manner hereinbefore directed relative to the sale under the claim and lien of the plaintiff Portland Wood Pipe Company, and the direction and provisions of this decree relative to such sale and the confirmation thereof and the execution of deeds and other necessary conveyances to the purchaser shall be observed, so far as applicable, in the sale that may be had to satisfy the claim of said Maney Brothers and Company. That any party to this action may become a bidder or purchaser at such sale; and if the cross-complainant Maney Brothers and Company, or any one for them or in their behalf, shall bid in said property, then and in that event such bidder shall be entitled to have the judgment in favor of said Maney Brothers and Company, or so much thereof as may be necessary, credited upon such bid instead of paying cash, paying, however,



a sufficient sum in cash to satisfy and discharge all expenses of such sale.

6. That upon the payment of the purchase price by the purchaser or purchasers of the said property, lands, premises, reservoir, water rights, canals, works, structures and irrigation system such Special Master shall execute and deliver a deed conveying the property purchased to such purchaser or purchasers, or his or their successors or assigns; and upon the execution and delivery of such deed and the expiration of the period of redemption as hereinafter fixed, the grantee thereunder shall be let into possession of the premises and property conveyed, and shall be entitled to hold, enjoy and possess said premises and property, and all the rights and privileges, immunities and franchises thereto appertaining, free and clear of any lien or liens of any of the defendants herein.

7. That in case the proceeds of said sale shall prove to be insufficient to provide for the payment in full of the sums hereinbefore mentioned and described, then such Special Master shall find and report to this Court the amount of such deficiency or deficiencies, and, such report being confirmed by this Court, the cross-complainant Maney Brothers and Company shall be entitled to judgment therefor against the defendants Crane Creek Irrigation Land and Power Company, E. D. Ford, A. G. Butterfield and R. C. McKinney, and to have execution issued thereon pursuant to the rules and practice of this Court.

8. That the provisions of the contracts, dated

August 22, 1910, between Crane Creek Irrigation Land and Power Company and the said Crane Creek Irrigation District and Sunnyside Irrigation District, to the effect that in the event said Crane Creek Irrigation Land and Power Company shall not increase the storage capacity of said reservoir to 70,617 acre feet within five years from the delivery and acceptance of the proportion of said irrigation system which said contracts provide shall be delivered and conveyed to said Districts, respectively, and that, in such event, said Company shall convey to said Districts certain additional percentage of interest, insofar as the same are still in force and effect and have not been modified or changed by supplemental contracts or agreements between said parties, shall be binding upon the purchaser or purchasers, their grantees, successors or assigns, under any sale or sales had in satisfaction of the lien or claim of said Maney Brothers and Company; and the purchaser or purchasers under such sale shall take only such interest in said reservoir, canals, water rights and irrigation system as said Crane Creek Irrigation Land and Power Company may have or be entitled to hold and retain under existing contracts between said Crane Creek Company and said Districts, entered into prior to the filing of the cross-bill of said Maney Brothers and Company.

*It is Further Ordered, Adjudged and Decreed,* That the enforcement by the plaintiff Portland Wood Pipe Company of the terms of this decree relating to its claim shall be without prejudice to the right

of the cross-complainant Maney Brothers and Company hereunder; and likewise the enforcement of the terms and provisions of this decree relative to the rights and claim of said Maney Brothers and Company shall be without prejudice to the rights of said Portland Wood Pipe Company; and said parties may separately and severally proceed hereunder for the enforcement of their respective rights and claims.

*It is Further Ordered, Adjudged and Decreed,* That all property, lands, premises, water rights, irrigation works, canals and structures and interests therein that may be sold under the provisions of this decree, whether in satisfaction of the claim of the Portland Wood Pipe Company or the claim of said Maney Brothers and Company, shall be subject to redemption by qualified redemptioners under the laws of the State of Idaho within three months from the date of confirmation of such sale, which redemption period is so fixed at three months upon the express agreement of the parties hereto, interested in said decree, that the same is a reasonable and proper period for redemption, in view of the nature and character of the property to be sold and the circumstances of the parties; that such redemption shall be made by payment of the amount required for redemption, computed according to the practice of this Court. Further provisions relative to such redemption may be made in the order of confirmation of sale.

*It is Further Ordered, Adjudged and Decreed,* That Slick Brothers Construction Company, Limit-

ed, one of the cross-complainants herein, take nothing by its cross-bill, and said cross-bill is hereby dismissed; and the defendants to said cross-bill shall be entitled to judgment against said Slick Brothers Construction Company, Limited, for their costs incurred in connection therewith, to be taxed as provided by statute and the rules of Court.

Any party may apply for further directions at the foot of this decree.

Dated June 12, 1915.

(Signed)

FRANK S. DIETRICH,  
District Judge.

Filed June 12, 1915.

---

(Title of Court and Cause.)

ASSIGNMENT OF ERRORS.

And now comes the cross-complainant, Maney Brothers & Co., and having presented an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered in the above entitled cause on the 12th day of June, A. D. 1915, says that said decree made and entered as aforesaid and the decision made and filed by the Court in this cause on the 17th day of May, 1915, are erroneous and unjust to this cross-complainant, and particularly in this:

1. Because the said Court erred in holding, decreeing and deciding that the mortgage of said cross-complainant referred to in said decree and in said decision, was not a first and prior lien upon the interest in the irrigation works, reservoir, water

rights, canals and structures conveyed by said Crane Creek Irrigation Land and Power Company to the defendant Sunnyside Irrigation District, or any part thereof.

2. Because the said Court erred in holding, decreeing and deciding that the cross-defendant Sunnyside Irrigation District took title free and clear of the lien of the mortgage of said cross-complainant to an undivided 47.2% interest, or any other interest, in the irrigation works, reservoir, water rights, canals and structures described in cross-complainant's mortgage or therein referred to, and conveyed to said Sunnyside Irrigation District by said Crane Creek Irrigation, Land & Power Company after the execution and recording of said mortgage.

3. Because the said Court erred in holding, decreeing and deciding that cross-defendant Crane Creek Irrigation Land and Power Company conveyed to the cross-defendant Crane Creek Irrigation District free of the lien of cross-complainant's mortgage any interest whatsoever in the reservoir, canals, water rights, irrigation system, works and structures described or referred to in cross-complainant's mortgage.

4. Because the said Court erred in holding, decreeing and deciding that the cross-defendant Crane Creek Irrigation District acquired an undivided 22.4% interest, or any other interest, in the irrigation works, reservoir, water rights, canals and structures described or referred to in complainant's mortgage free and clear of the lien of said mortgage.

5. Because the said Court erred in holding, decreeing and deciding that said cross-complainant had no lien, claim, or demand whatsoever on or against the interests of said Crane Creek Irrigation District and of said Sunnyside Irrigation District, cross-defendants, in and to the reservoir, irrigation works, water rights, canals and structures described in the decree and purporting to have been conveyed or transferred to said cross-defendants by the said Crane Creek Irrigation Land and Power Company subsequent to the execution and recording of cross-complainant's mortgage.

6. Because the said Court erred in holding, decreeing and deciding that the cross-complainant's mortgage was not a lien upon all the property, irrigation works, reservoir, canals, water rights and structures owned by the Crane Creek Irrigation Land and Power Company at the time of the execution of said mortgage or thereafter acquired by said Company, and particularly upon all of that certain irrigation system, reservoir, canals, water rights, works and structures described in the decree herein and in cross-complainant's said mortgage.

7. Because the said Court erred in holding, decreeing and deciding that the sum of One Thousand Dollars (\$1,000.00) was a reasonable attorneys' fee to be allowed cross-complainant for the foreclosure of its said mortgage, and in not holding and deciding that the said cross-complainant was entitled to an attorneys' fee of Three Thousand Dollars (\$3,000.-00) for the foreclosure of its said mortgage.

8. Because said Court erred in holding and deciding that certain resolutions passed by the Board of Directors of the said Sunnyside Irrigation District and by the Board of Directors of said Crane Creek Irrigation District on or about the 18th day of August, 1914, and a certain certificate executed by the President of each of said Districts in June, 1914 (cross-complainant's, Maney Brothers & Co., Exhibits "5" and "6"), conceding the prior lien of cross-complainant's said mortgage upon the irrigation works, water rights and structures conveyed to said Districts by said Crane Creek Irrigation Land and Power Company, were ineffectual or without force and effect, and in holding and deciding that said resolutions and certificate had no efficacy whatsoever.

9. Because the said Court erred in holding and deciding that the conveyances from said Crane Creek Irrigation Land and Power Company to said Irrigation Districts made, executed and delivered long after the execution and recording of cross-complainant's said mortgage and long after full notice of said mortgage had been acquired and obtained by said Districts, related back to the date of the contract of August 22nd, 1910, between said Crane Creek Irrigation Land and Power Company and the said Irrigation Districts for the sale and construction of said irrigation works.

10. Because the Court erred in holding and deciding that said Irrigation Districts had the right to apply the bonds given as a part of the purchase price of said irrigation works to the payment of other liens

and encumbrances, and that the bonds were so applied by the Districts, and that none of the bonds constituting the purchase price were turned over to or retained by the Crane Creek Irrigation Land and Power Company for its own profit, and that after applying such bonds to the payment of mechanics' liens no balance remained that could be applied to the reduction of cross-complainant's mortgage.

11. Because the Court erred in holding and deciding that the lien of cross-complainant's mortgage did not extend to such property, rights and interests as were covered by the contracts between the Crane Creek Irrigation, Land and Power Company and said Irrigation Districts and subsequently embraced in deeds from said Company to said Districts, made, executed and delivered long after the execution and recording of cross-complainant's mortgage.

12. Because the said Court erred in not decreeing that cross-complainant's said mortgage was a lien upon all of said irrigation system, reservoir, water rights, works and structures, and in not decreeing a sale of the whole thereof in satisfaction of the amount due cross-complainant under said mortgage.

*Wherefore*, cross-complainant prays that said decree be reversed and modified to the extent of giving to the said cross-complainant a first and prior lien upon all of said irrigation system, water rights, reservoir, works and structures, and allowing said cross-complainant's attorneys fees for Three Thousand Dollars (\$3,000.00) for the foreclosure of its said mortgage; and with such directions to said District Court as may be necessary or proper for the



protection of cross-complainant's rights under its said mortgage.

RICHARDS & HAGA,  
McKEEN F. MORROW,  
Solicitors for Cross-Complainant,  
Maney Brothers & Co.

Filed August 14th, 1915.

---

(Title of Court and Cause.)

PETITION FOR APPEAL.

And now comes Maney Brothers & Co. (a co-partnership consisting of J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells), one the cross-complainants above named, and conceiving itself aggrieved by the decree made and entered on the 12th day of June, 1915, in the above cause, and by the decision of the Court rendered herein on the 17th day of May, 1915, doth hereby appeal from said decree and decision to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith; and said cross-complainant prays that this, its appeal, may be allowed, and that citation issue as provided by law, and that a transcript of the record, evidence, proceedings and papers upon which said decree and decision was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

RICHARDS & HAGA,  
McKEEN F. MORROW,  
Solicitors for Cross-Complainant,  
Maney Brothers & Co.

Offices: Idaho Building, Boise, Idaho.

## ORDER ALLOWING APPEAL.

And now, to-wit, on this 14th day of August, 1915, it is ordered that the foregoing petition be granted, and that the appeal be allowed as prayed for, and that cross-complainant, Maney Brothers & Co., file a bond on appeal in the sum of Five Hundred Dollars (\$500.00) with good and sufficient security, to be approved by the Court.

(Signed)

FRANK S. DIETRICH,  
District Judge.

Filed August 14th, 1915.

---

(Title of Court and Cause.)

## BOND ON APPEAL.

*Know All Men by These Presents*, That we, Maney Brothers & Co. (a co-partnership consisting of J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells) as principal in this obligation, and the Boise Title and Trust Company, a corporation with its principal place of business at Boise, Idaho, as surety, are held and firmly bound unto the above-named cross-defendants in the sum of Five Hundred Dollars (\$500.00), for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of August, 1915.

The condition of this obligation is such, that:

*Whereas*, The above-named Maney Brothers & Co., cross-complainant, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order and decree made and entered in the above entitled suit in the District Court of the United States for the District of Idaho, Southern Division, on the 12th day of June, A. D. 1915.

*Now, Therefore*, If the above-named cross-complainant and appellant, Maney Brothers & Co., shall prosecute its said appeal to effect and answer all costs if it shall fail to make its said plea good, then the above obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

*In Witness Whereof*, The said principal has caused its name to be hereunto subscribed by a member of its firm, and the said Boise Title and Trust Company, as surety, has caused its name to be hereunto subscribed by its duly authorized officers, and its corporate seal affixed.

MANEY BROTHERS & CO.,

By E. J. Wells.

BOISE TITLE AND TRUST COMPANY,

(Seal)

By S. H. Hays, President.

Attest: W. J. Abbs, Secretary.

Approved August 14th, 1915.

FRANK S. DIETRICH,

District Judge.

Filed August 14th, 1915.

(Title of Court and Cause.)

*Assignment of Errors by Crane Creek Irrigation District.*

Comes now the cross-defendant, Crane Creek Irrigation District, and makes and files the following Assignment of Errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court on the 12th day of June, A. D. 1915, in said cause:

I.

The U. S. District Court for the District of Idaho, Southern Division, erred in adjudging by its said final decree herein, that the mortgage of cross-complainant, Maney Brothers & Co., was a charge and lien upon the lands and premises, reservoir, canals, irrigation works, structures and water rights comprising the irrigation system constructed by the Crane Creek Irrigation Land & Power Company, defendant herein, under a contract with this cross-defendant, and cross-defendant Sunnyside Irrigation District, and which had been theretofore, and was at the time the said alleged mortgage was given, dedicated to public uses.

II.

The said Court erred in adjudging that the mortgage executed by the Crane Creek Irrigation Land & Power Company, a corporation, to the cross-complainant, Maney Brothers & Co., a co-partnership, on the 29th day of September, A. D. 1911, was a first charge and lien upon all the right, title and interest of the said defendant, Crane Creek Irriga-

tion Land & Power Company, in the lands and premises, reservoir, canals, irrigation works, structures and water rights of the irrigation system constructed as hereinbefore stated, by the said Crane Creek Irrigation Land & Power Company, for this cross-defendant Crane Creek Irrigation District, and cross-defendant, Sunnyside Irrigation District, and dedicated to public uses.

### III.

The said Court erred in adjudging that the said mortgage was a valid charge and first lien upon an undivided 30.4% of the said hereinabove mentioned irrigation system, superior to the right, title and interests of this cross-defendant, and of cross-defendant, Sunnyside Irrigation District.

### IV.

The said Court erred in not adjudging and decreeing that the said mortgage executed by the Crane Creek Irrigation Land & Power Company on the 29th day of September, A. D. 1911, and delivered to the said cross-complainant, Maney Brothers & Co., a co-partnership, as security for the indebtedness accrued and to accrue to the said co-partnership from the said Crane Creek Irrigation Land & Power Company, through and because of the construction of said irrigation system, was invalid, in that the said Crane Creek Land & Power Company had no authority or power vested in it to execute a mortgage upon said property, or any part thereof, and because in all the premises the said cross-complainant, Maney Brothers & Co., had actual knowledge and notice that the

property hereinbefore and in said decree mentioned, had been and was dedicated to public uses, and there was no authority vested in the Crane Creek Irrigation Land & Power Company to charge the same with a valid mortgage lien.

V.

The said court erred in adjudging that the alleged interest of the Crane Creek Irrigation Land & Power Company in the irrigation system of this cross-defendant, and of the cross-defendant, Sunnyside Irrigation District, should be sold at public sale; and the said court erred in adjudging that any part of the said system should be sold at public sale to satisfy the claim of the cross-complainant, Maney Brothers & Co., because under the law and the statutes of Idaho, the said property, and the whole thereof, was and is exempt from execution or foreclosure sale and the said court had no authority in the premises.

*Wherefore*, this cross-defendant prays that the judgment of the said District Court of the United States for the District of Idaho, Southern Division, be reversed, and that the said court be directed to enter its decree denying a foreclosure of the said mortgage against any of the public property hereinbefore mentioned and described, with such other and further relief to which this cross-defendant may be entitled.

ED R. COULTER,

C. S. VARIAN,

Solicitors for Cross-Defendant Crane Creek Irrigation District.

Due and legal service by copy of the within Assignment of Errors is hereby admitted this 23rd day of August, 1915.

RICHARDS & HAGA,  
Solicitors for Cross-Complainant Maney Brothers  
and Company.

Endorsed: Filed Aug. 23, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

---

(Title of Court and Cause.)

*Assignment of Errors by Sunnyside Irrigation  
District.*

Comes now the cross-defendant, Sunnyside Irrigation District, and makes and files the following Assignment of Errors upon which it will rely upon its prosecution of the Appeal in the above entitled cause from the decree made by this Honorable Court on the 12th day of June, A. D. 1915, in said cause:

I.

The United States District Court for the District of Idaho, Southern Division, erred in adjudging by its said final decree herein, that the mortgage of cross-complainant, Maney Brothers & Co., was a charge and lien upon the lands and premises, reservoir, canals, irrigation works, structures and water rights comprising the irrigation system constructed by the Crane Creek Irrigation Land & Power Company, defendant herein, under a contract with this cross-defendant, and cross-defendant Crane Creek Irrigation District, and which had been theretofore,

and was at the time the said alleged mortgage was given, dedicated to public uses.

## II.

The said Court erred in adjudging that the mortgage executed by the Crane Creek Irrigation Land & Power Company, a corporation, to the cross-complainant, Maney Brothers & Co., a co-partnership, on the 29th day of September, A. D. 1911, was a first charge and lien upon all the right, title and interest of the said defendant, Crane Creek Irrigation Land & Power Company, in the lands and premises, reservoir, canals, irrigation works, structures and water rights of the irrigation system constructed as hereinbefore stated, by the said Crane Creek Irrigation Land & Power Company, for this cross-defendant, Sunnyside Irrigation District, and cross-defendant, Crane Creek Irrigation District, and dedicated to public uses.

## III.

The said Court erred in adjudging that the said mortgage was a valid charge and first lien upon an undivided 30.4% of the said hereinabove mentioned irrigation system, superior to the right, title and interest of this cross-defendant, and of cross-defendant Crane Creek Irrigation District.

## IV.

The said Court erred in not adjudging and decreeing that the said mortgage executed by the Crane Creek Irrigation Land & Power Company on the 29th day of September, A. D. 1911, and delivered to



the said cross-complainant, Maney Brothers & Co., a co-partnership, as security for the indebtedness accrued and to accrue to the said co-partnership from the said Crane Creek Irrigation Land & Power Company, through and because of the construction of said irrigation system was invalid, in that the said Crane Creek Land & Power Company had no authority or power vested in it to execute a mortgage upon said property, or any part thereof, and because in all the premises the said cross-complainant, Maney Brothers & Co., had actual knowledge and notice that the property hereinbefore and in said decree mentioned, had been and was dedicated to public uses, and there was no authority vested in the Crane Creek Irrigation Land & Power Company to charge the same with a valid mortgage lien.

#### V.

The said Court erred in adjudging that the alleged interest of the Crane Creek Irrigation Land & Power Company in the irrigation system of this cross-defendant, and of the cross-defendant, Crane Creek Irrigation District, should be sold at public sale; and the said Court erred in adjudging that any part of the said system should be sold at public sale to satisfy the claim of the cross-complainant, Maney Brothers & Co., because under the law and the statutes of Idaho, the said property, and the whole thereof, was and is exempt from execution or foreclosure sale and the said Court had no authority in the premises.

*Wherefore*, This cross-defendant prays that the judgment of the said District Court of the United States for the District of Idaho, Southern Division, be reversed, and that the said Court be directed to enter its decree denying a foreclosure of the said mortgage against any of the public property hereinbefore mentioned and described, with such other and further relief to which this cross-defendant may be entitled.

ED R. COULTER,  
C. S. VARIAN,

Solicitors for Cross-Defendant Sunnyside Irrigation District.

Due and legal service by copy of the within Assignment of Errors is hereby admitted this 23rd day of August, 1915.

RICHARDS & HAGA,  
Solicitors for Cross-Complainant Maney Brothers & Company.

Endorsed: Filed Aug. 23, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

---

(Title of Court and Cause.)

*Order Allowing Appeal by Sunnyside Irrigation District Approving Record and Bond for Costs.*

On reading and filing the Notice of Appeal of Sunnyside Irrigation District, a corporation, cross-defendant herein, and the assignment of errors herein having been made and filed by the said cross-defendant, it is ordered that an Appeal to the United States

Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore made, entered and filed herein on the 12th day of June, A. D. 1915, be, and the same is, hereby allowed, and that the transcript of the record herein be forthwith transmitted to the said Circuit Court of Appeals; and it appearing that an Appeal by Maney Brothers & Co., cross-complainants herein, to the said Circuit Court of Appeals for the Ninth Circuit, has been heretofore allowed and perfected, and that the same is and will be sufficient for all the purposes of the present Appeal by the Sunnyside Irrigation District, it is further ordered, that the record upon the said last mentioned Appeal shall be the same as that prepared by and for the Appeal by Maney Brothers & Co., as aforesaid, and that the amount of security on the said Appeal by the Sunnyside Irrigation District is hereby fixed at the sum of Two Hundred Dollars, and that upon making and filing with the clerk of this Court a good and sufficient bond in said sum by the said Sunnyside Irrigation District, the same shall act for costs and all further proceedings, etc., shall be stayed until the final determination of said Appeal by the United States Circuit Court of Appeals, and until the further order of this Court.

Done in open Court this 23rd day of August, A. D. 1915.

FRANK S. DIETRICH,

Judge.

Endorsed: Filed Aug. 23, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

*Order Allowing Appeal by Crane Creek Irrigation District, Approving Record and Bond for Costs.*

On reading and filing the Notice of Appeal of Crane Creek Irrigation District, a corporation, cross-defendant herein, and the assignment of errors herein having been made and filed by the said cross-defendant, it is ordered that an Appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore made, entered and filed herein on the 12th day of June, A. D. 1915, be, and the same is, hereby allowed, and that the transcript of the record herein be forthwith transmitted to the said Circuit Court of Appeals; and it appearing that an appeal by Maney Brothers & Co., cross-complainants herein, to the said Circuit Court of Appeals for the Ninth Circuit, has been heretofore allowed and perfected, and that the same is and will be sufficient for all the purposes of the present appeal by the Crane Creek Irrigation District, it is further ordered, that the record upon the said last mentioned appeal shall be the same as that prepared by and for the appeal by Maney Brothers & Co., as aforesaid, and that the amount of security on the said appeal by the Crane Creek Irrigation District is hereby fixed at the sum of Two Hundred Dollars, and that upon making and filing with the clerk of this Court a good and sufficient bond in said sum by the said Crane Creek Irrigation District, the same shall act for costs and all further proceedings, etc., shall be stayed until the final determination of said appeal by the United

States Circuit Court of Appeals, and until the further order of this Court.

Done in open Court this 23rd day of August, A. D. 1915.

FRANK S. DIETRICH,

Judge.

Endorsed: Filed Aug. 23, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

---

(Title of Court and Cause.)

*Notice of Appeal by Crane Creek Irrigation District.*

The above-named cross-defendant, the Crane Creek Irrigation District, a corporation, conceiving itself aggrieved by the final decree made and entered in the above entitled cause on the 12th day of June, A. D. 1915, wherein and whereby it was ordered, adjudged and decreed that that certain mortgage executed by the Crane Creek Irrigation Land & Power Company, a corporation, to the said Maney Brothers & Company, a co-partnership, on the 29th day of September, A. D. 1911, was a first charge and lien upon all the right, title and interest of the said defendant, Crane Creek Irrigation Land & Power Company, in the lands and premises, reservoir, canals, irrigation works, structures, water rights, comprising and being a part of the irrigation system of this cross-defendant, and cross-defendant, Sunnyside Irrigation District, a corporation; and that the interest of the said Crane Creek Irrigation Land & Power Company being an undivided 30.4% in the said above mentioned property was charged by the said mort-

gage as a first lien and superior to the right, title and interest of this cross-defendant, and cross-defendant, Sunnyside Irrigation District; all as security for the payment to the said cross-complainant, Maney Brothers & Company, of the sums of money adjudged to be due it from the said cross-defendant, the Crane Creek Irrigation Land & Power Company, does hereby appeal from the said final decree of June 12, 1915, to the United States Circuit Court of Appeals, for the Ninth Circuit, and so much thereof as charges any part of the irrigation system of this cross-defendant, and cross-defendant, Sunnyside Irrigation District, with the lien of the said mortgage, and adjudges a sale of said irrigation system for the reasons set forth in the assignment of errors, which is filed herewith by the said cross-defendant, the Crane Creek Irrigation District; and the said cross-defendant, Crane Creek Irrigation District, prays that the amount of security on said appeal to be furnished by it for costs and as a supersedeas, be fixed by the court and that upon the filing with the clerk of this court of such bond all further proceedings shall be stayed until the final determination of said appeal by the United States Circuit Court of Appeals.

And, inasmuch as the said cross-complainant, Maney Brothers & Company, has taken and perfected an appeal from the said decree to the said Circuit Court of Appeals for the Ninth Circuit, and the record on said appeal has been prepared and approved and is sufficient for the purposes of the appeal by

this cross-defendant, as it is advised, it is further prayed that an order be entered adjudging such record when printed to be sufficient for all the purposes of this cross-appeal.

ED R. COULTER,  
C. S. VARIAN,

Solicitors for Crane Creek Irrigation District, Cross-Defendant.

Due and legal service by copy of the within Notice of Appeal is hereby admitted this 23rd day of August, 1915.

RICHARDS & HAGA,  
Solicitors for Cross-Complainant, Maney Brothers & Company.

Endorsed: Filed Aug. 23, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

---

(Title of Court and Cause.)

*Notice of Appeal by Sunnyside Irrigation District.*

The above-named cross-defendant, the Sunnyside Irrigation District, a corporation, conceiving itself aggrieved by the final decree made and entered in the above entitled cause on the 12th day of June, A. D. 1915, wherein and whereby it was ordered, adjudged and decreed that that certain mortgage executed by the Crane Creek Irrigation Land & Power Company, a corporation, to the said Maney Brothers & Company, a co-partnership, on the 29th day of September, A. D. 1911, was a first charge and lien upon all the right, title and interest of the said defendant, Crane Creek Irrigation Land & Power Com-

pany, in the lands and premises, reservoir, canals, irrigation works, structures, water rights, comprising and being a part of the irrigation system of this cross-defendant, and cross-defendant, Crane Creek Irrigation District, a corporation; and that the interest of the said Crane Creek Irrigation Land & Power Company being an undivided 30.4% in the said above mentioned property was charged by the said mortgage as a first lien and superior to the right, title and interest of this cross-defendant, and cross-defendant Crane Creek Irrigation District; all as security for the payment to the said cross-complainant, Maney Brothers & Company, of the sums of money adjudged to be due it from the said cross-defendant, the Crane Creek Irrigation Land & Power Company, does hereby appeal from the said final decree of June 12, 1915, to the United States Circuit Court of Appeals, for the Ninth Circuit, and so much thereof as charges any part of the irrigation system of this cross-defendant, and cross-defendant Crane Creek Irrigation District, with the lien of the said mortgage, and adjudges a sale of said irrigation system for the reasons set forth in the assignment of errors, which is filed herewith by the said cross-defendant, the Sunnyside Irrigation District; and the said cross-defendant, Sunnyside Irrigation District, prays that the amount of security on said Appeal to be furnished by it for costs, damages and as a supersedeas, be fixed by the court and that upon the filing with the clerk of this court of such bond all further proceedings shall be stayed until the final determination of



said Appeal by the United States Circuit Court of Appeals.

And, inasmuch as the said cross-complainant, Maney Brothers & Company, has taken and perfected an appeal from the said decree to the said Circuit Court of Appeals, for the Ninth Circuit, and the record on said Appeal has been prepared and approved and is sufficient for the purposes of the Appeal by this cross-defendant, as it is advised, it is further prayed that an order be entered adjudging such record when printed to be sufficient for all the purposes of this cross-appeal.

ED R. COULTER,  
C. S. VARIAN,

Solicitors for Sunnyside Irrigation District, Cross-Defendant.

Due and legal service by copy of the within Notice of Appeal is hereby admitted this 23rd day of August, 1915.

RICHARDS & HAGA,  
Solicitors for Cross-Complainants, Maney Brothers & Company.

Endorsed: Filed Aug. 23, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

---

(Title of Court and Cause.)

*Undertaking on Appeal.*

*Know All Men By These Presents, That we, Crane Creek Irrigation District, a corporation, as principal, and the American Surety Company of New York, a corporation, as surety, are held and firmly*

bound unto J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells, as co-partners, and impleaded in the above entitled cause as Maney Brothers & Co., in the sum of Two Hundred Dollars, lawful money of the United States of America, to be paid to the several co-partners above named, their and each of their administrators, heirs and assigns, to which payment well and truly to be made we bind ourselves, and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 23rd day of August, A. D. 1915.

*Whereas*, The above-named defendant, Crane Creek Irrigation District, a corporation, obtained in open court an order allowing its appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from a decree in favor of the above-named co-partners, under the name of Maney Brothers & Co., against the property of this cross-defendant, and of the cross-defendant, Sunnyside Irrigation District, rendered in said District Court on the 12th day of June, A. D. 1915, to reverse the said decree, and

*Whereas*, the said United States District Court has fixed the sum of a bond on said appeal as security for all costs and damages, in the sum of Two Hundred Dollars,

*Now, Therefore*, The condition of this obligation is such that if the Crane Creek Irrigation District shall prosecute its said appeal to effect and shall answer all damages and costs that may be awarded against it, including all just damages for delay and costs and

interest on said appeal, if it fails to make its said appeal good, then this obligation shall be void, otherwise the same shall remain in full force and effect.

*In Witness Whereof*, The parties aforesaid have caused their corporate names to be hereunto subscribed, and their corporate seals attached by the proper officers in that behalf duly authorized.

(Seal) CRANE CREEK IRRIGATION DISTRICT,

By Wm. Theurer, President.

(Seal) AMERICAN SURETY COMPANY OF NEW YORK,

By G. B. Eckles, Resident Vice President.

Wm. R. Werb, Resident Assistant Secretary.

B. S. Varian, Resident Agent.

The foregoing bond is hereby approved as to form amount and sufficiency of surety this 27th day of August, A. D. 1915. FRANK S. DIETRICH,  
District Judge.

---

(Title of Court and Cause.)

*Statutory Affidavit for Corporate Surety. Idaho.*  
State of Utah,

County of Salt Lake,—ss.

On the 21st day of August, 1915, personally appeared before me, a Notary Public in and for the County and State aforesaid, G. B. Eckles, to me known to be a Resident Vice President of the American Surety Company of New York, who being by me duly sworn did depose and say: that he resided in the City of Salt Lake, State of Utah; that he is

Resident Vice President of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation; and that he signed his name thereto by like order; that said corporation has complied with Chapter Eleven of the Idaho Revised Codes and all other laws of the State of Idaho relating to surety companies and has also complied with the Act of Congress approved August Thirteenth, A. D. 1894, entitled: "An act relative to recognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon," as amended March 23, 1910; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said G. B. Eckles further said that he was acquainted with Wm. R. Werb and knew him to be one of the Resident Assistant Secretaries of said corporation; that the signature of said Wm. R. Werb subscribed to the said instrument is in the genuine handwriting of the said Wm. R. Werb and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him, the said G. B. Eckles, Resident Vice President. Affiant further says that the Insurance Commissioner of the State of Idaho, whose address is Boise, Idaho, has been appointed attorney upon whom process for the State of Idaho may be served according to law.

G. B. ECKLES,

Subscribed and sworn to before me this 21st day of August, 1915.

CORA BEATTY,  
Notary Public.

Endorsed: Filed August 26, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

---

(Title of Court and Cause.)

*Undertaking on Appeal.*

*Know All Men By These Presents*, That we, Sunnyside Irrigation District, a corporation, as principal, and the American Surety Company of New York, a corporation, as surety, are held and firmly bound unto J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells, as co-partners, and impleaded in the above entitled cause as Maney Brothers & Co., in the sum of Two Hundred and No-hundredths Dollars, lawful money of the United States of America, to be paid to the several co-partners above named, their and each of their administrators, heirs and assigns, to which payment well and truly to be made, we bind ourselves and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 23rd day of August, A. D. 1915.

*Whereas*, The above-named defendant, Sunnyside Irrigation District, a corporation, obtained in open court an order allowing its appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from a decree in favor of the above-named co-partners, under the name of Maney Brothers & Co., against the property of this cross-defendant, and of

the cross-defendant, Crane Creek Irrigation District, rendered in said District Court on the 12th day of June, A. D. 1915, to reverse the said decree, and

*Whereas*, The said United States District Court has fixed the sum of a bond on said appeal as surety for all costs and damages, in the sum of Two Hundred and No-hundredths Dollars,

*Now, Therefore*, The condition of this obligation is such that if said Sunnyside Irrigation District shall prosecute its said appeal to effect and shall answer all damages for delay and costs and interest on said appeal, if it fails to make its said appeal good, then this obligation shall be void, otherwise the same shall remain in full force and effect.

*In Witness Whereof*, The parties aforesaid have caused their corporate names to be hereunto subscribed, and their corporate seals attached by the proper officers in that behalf duly authorized.

(Seal) SUNNYSIDE IRRIGATION DISTRICT,  
By August Brockman, President.

Attest: Ed R. Coulter, Secretary.

(Seal)

AMERICAN SURETY COMPANY OF NEW  
YORK,

By G. B. Eckles, Resident Vice President.

Wm. R. Werb, Resident Assistant Secretary.

B. S. Varian, Resident Agent.

The foregoing bond is hereby approved as to form, amount and sufficiency of surety, this 28th day of August, A. D. 1915.

FRANK S. DIETRICH,  
District Judge.

(Title of Court and Cause.)

*Statutory Affidavit for Corporate Surety. Idaho.*

State of Utah,

County of Salt Lake,—ss.

On the 21st day of August, 1915, personally appeared before me, a Notary Public in and for the County and State aforesaid, G. B. Eckles, to me known to be a Resident Vice President of the American Surety Company of New York, who, being by me duly sworn, did depose and say: that he resided in the city of Salt Lake, State of Utah; that he is Resident Vice President of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation; and that he signed his name thereto by like order; that said corporation has complied with Chapter Eleven of the Idaho Revised Codes and all other laws of the State of Idaho relating to surety companies and has also complied with the Act of Congress approved August Thirteenth, A. D. 1894, entitled: "An act relative to recognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon," as amended March 23, 1910; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said G. B. Eckles further said that he was acquainted with Wm. R. Werb and knew him to be one of the

Resident Assistant Secretaries of said corporation; that the signature of said Wm. R. Werb subscribed to the said instrument is in the genuine handwriting of the said Wm. R. Werb and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him, the said G. B. Eckles, Resident Vice President. Affiant further says that the Insurance Commissioner of the State of Idaho, whose address is Boise, Idaho, has been appointed attorney upon whom process for the State of Idaho may be served according to law.

G. B. ECKLES.

Subscribed and sworn to before me this 21st day of August, 1915.

CORA BEATTY,

Notary Public.

Endorsed: Filed August 26, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

---

At a stated term of the District Court of the United States for the District of Idaho, held at Boise, Idaho, on Monday, the 23rd day of August, 1915.

Present: Hon. Frank S. Dietrich, Judge.

PORTLAND WOOD PIPE COMPANY

VS.

SLICK BROTHERS CONSTRUCTION COMPANY, a Corporation, CRANE CREEK IRRIGATION LAND & POWER COMPANY, CRANE CREEK IRRIGATION DISTRICT, a Corporation, SUNNYSIDE IRRIGATION DISTRICT, a Corporation, et al.



## No. 511.

Now comes the defendants, the Crane Creek Irrigation District and Sunnyside Irrigation District, by their Solicitors, and in open Court severally present their petitions for an allowance of an appeal from a final decree of this Court made and filed in this cause on the 12th day of June, 1915, to the Circuit Court of Appeals for the Ninth Circuit and for fixing the amount of a bond in each case to act as a bond for costs; and it appearing that said petitions are in form and that each of the said defendants has presented and filed their assignment of errors, it is ordered that the appeals in each case be, and the same is, hereby allowed and the bond in each case is fixed in the sum of \$200.00 to act as a bond for costs.

---

CITATION.

The United States of America.—ss.

To CRANE CREEK IRRIGATION DISTRICT,  
SUNNYSIDE IRRIGATION DISTRICT,  
PORTLAND WOOD PIPE COMPANY,  
CRANE CREEK IRRIGATION LAND AND  
POWER COMPANY, E. D. FORD, A. G. BUT-  
TERFIELD and R. C. MCKINNEY:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco in the State of California, within thirty (30) days from the date of this Writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Idaho,

Southern Division, wherein Maney Brothers & Co. (a co-partnership consisting of J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells), is cross-complainant, and you, Crane Creek Irrigation District, Sunnyside Irrigation District, Portland Wood Pipe Company, Crane Creek Irrigation Land and Power Company, E. D. Ford, A. G. Butterfield and R. C. McKinney, and others, are cross-defendants, to show cause, if any there be, why the judgment, order or decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

*Witness*, the Honorable Frank S. Dietrich, United States District Judge for the District of Idaho, this 14th day of August, A. D. 1915, and of the Independence of the United States the one hundred and fortieth year.

FRANK S. DIETRICH,

(Seal)

District Judge.

Attest: A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

---

Service of the foregoing Citation and receipt of a copy thereof admitted this 16th day of August, 1915.

C. S. VARIAN,

ED R. COULTER,

Solicitors for Crane Creek Irrigation District and Sunnyside Irrigation District.

B. S. VARIAN,

Solicitor for Crane Creek Irrigation, Land and Power Company, E. D. Ford, A. G. Butterfield and R. C. McKinney.



I further certify that the cost of the record herein amounts to the sum of \$283.90 and that the same has been paid by the appellant.

Witness my hand and the seal of said Court, affixed at Boise, Idaho, this 30th day of August, 1915.

A. L. RICHARDSON,

Clerk.

By PEARL E. ZANGER, Deputy.

Deputy.